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ART. I.—*Elémens de la Grammaire Chinoise; ou Principes Généraux du Kou-wen, ou style antique, et du Kouan hoa, c'est à dire, de la langue commune, généralement usitée dans l'Empire Chinois: par M. Abel Remusat, de l'Académie Royale des Inscriptions et Belles Lettres, Professeur de Langue et Litterature Chinoises et Tartares au Collége Royale de France.* Paris. Imprimerie, Royale. 1822.

THE Chinese language has hitherto been considered as extremely difficult. Mr Remusat, whose name alone is an authority of the highest kind, independently of the reasons which he gives for his opinion, considers this idea as an error. His remarks are so well fitted to encourage a more general attention to this curious language, that we shall extract them by way of introduction to a short notice of the contents of the grammar.

'As the difficulty of learning the Chinese language has been greatly exaggerated,' says the author in his preface, 'it is of some importance to show that the acquisition of it is just as easy as that of any other. This will appear to a demonstration, from a perusal of the little work now submitted to the public; and, with a view of encouraging the student, I have no hesitation in giving him beforehand my decided opinion that he will find this to be the fact. Every thing essential is contained in this short tract; and the student who

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has learned the four hundred paragraphs of which it is composed may begin at once his course of reading without any apprehension of being arrested by grammatical difficulties. Had the introduction to this language been equally easy a century ago, it would probably have been much more extensively cultivated; and the literary treasures locked up in it would before now have been turned to account. It is ascertained at present that the Chinese written language, the study of which was said to occupy a whole life, may be learned as quickly as any other and without any greater effort of attention or memory. The only real difficulty lies in the difference between the grammatical forms of this language and of those to which we are accustomed; but this is so far from being insurmountable that a week's labor will remove it entirely. The number of characters appears formidable; but it is so in apppearance only, as the greater part of them are not used; and a person who is acquainted with two thousand will never be at a loss. They have certainly a strange look; but this is rather an advantage than otherwise, as it serves to fix them in the memory; and it may also be added, in opposition to the common opinion, that these characters are the more easily impressed upon the mind from their representing objects instead of sounds. The dictionaries are methodical and regular, books are generally divided and arranged in the most convenient form with notes and illustrations, tables of contents and indexes, running titles and numbered pages, and in short every possible facility for consultation and study. The grammar is of the simplest kind. Particles are used to modify the sense of the principal words instead of changes in the terminations, and the order in which the words are arranged in a sentence is invariable; so that, although the language is elliptical and figurative, it seldom happens that a phrase can be understood in two ways. I make these remarks because they express an opinion entirely different from the one generally received. It has happened, by a sort of fatality, that the most erroneous notions have been circulated upon this subject by a succession of writers; but any judicious student will be satisfied, in a very short time, that the Chinese, like the rest of the world, attach a meaning to what they write and speak; and that, with the necessary study and attention, they may of course be understood.'

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One great difficulty has hitherto been the want of elementary books. The Catholic missionaries collected a mass of materials proper to be employed in the composition of such works; but of these a small proportion has yet been published, and that in a very unsatisfactory form. Mr Remusat considers the unpublished treatise of Father Prémare, entitled *Notitia linguæ Sinicæ*, as by far the best in existence. It belongs to the Royal library at Paris, and is so voluminous that it will probably not be printed very soon. The author also speaks with approbation of Morrison's grammar of the Chinese language, printed at Serampore in 1815; and of the dictionary of the same author, which, however, is incomplete. The best complete dictionary is the Chinese and Latin one of Father Basil de Glemona, published by Mr de Guignes jun.; to which should be added the supplement of Klaproth.

Mr Remusat seems to entertain high notions of the value of Chinese literature. 'The Royal library,' he observes, 'contains about five thousand volumes of Chinese books, most of which have never been opened. They are replete with the most valuable information; and comprehend all the best works in the language in the several departments of mythology and antiquities, history, geography and statistics; legislation and politics; natural history; plays, poetry, and novels. To explore this rich mine which remains almost untouched, among so many others that are nearly exhausted, would reward the labor of twenty studious persons for half a century; and only two or three years of preparation are necessary to obtain a free access to its treasures. The value of them cannot be doubted for a moment by any intelligent man; and the neglect, in which they have so long been suffered to remain, is far from being honorable to the philosophical spirit of the nation.' A printed catalogue of these books drawn up by Fourmont is already in existence. Mr Remusat informs us that he has been for some years engaged in preparing another, more correct and complete. Some of these works are remarkable for the beauty of the impression, as the *Kou-wen-youan-kian*, which the author considers as perhaps the most splendid specimen of typography in the library. Others extend to a very extraordinary number of volumes. An historical collection, of which the library possesses two detached parts, one in eighty volumes, and the other in sixty,

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is said to extend in the whole to no less than six thousand. The substantial merit of some of these productions is not less distinguished, as we learn from the following character given by Mr Remusat of a sort of Encyclopedia. 'This excellent work,' he observes, 'is the finest monument of Chinese literature. It is a vast collection of memoirs on all sorts of subjects, in which the whole stock of learning possessed by the Chinese in the several departments of philosophy and history, is digested in the most admirable order. The work is a library of itself; and, if there were no other books in the language, it would be worth learning merely for the sake of reading this.' There is an air of professional enthusiasm about some of these remarks, which will not escape the notice of the judicious reader; but the high respectability and acknowledged learning of Mr Remusat afford a sufficient guarantee of the substantial correctness of his opinions.

The curiosity of the reader may perhaps be gratified by a few of the more general remarks contained in this grammar upon the structure of the Chinese language.

The simple sounds which enter into the composition of it consist, according to the Chinese enumeration, of thirty six consonants and ten vowels, including the nasals; but many of them are almost imperceptible varieties in the utterance of the same sound; and Mr Remusat reduces the number of consonant sounds, which can be expressed by European letters, to twenty six. The vowels are the five which are found in all the European languages, pronounced in the Italian long; the four French nasals, with the addition of an Italian *n* nasal, and the French *e* mute. Hence the elementary sounds may be considered as substantially the same with those which form the basis of the various alphabets of Europe. But the Chinese have no alphabet, that is, they have no characters by which to express these sounds in writing.

The language consists of about four hundred and fifty words, all monosyllables, and composed, for the most part, of an initial consonant, and a final vowel or nasal. Hence the whole language is exactly represented by the series of words that form the first lesson for reading in the common school books, ba, be, bi, bo, bu; ca, ce, ci, co, cu, &c; making allowance for the difference between the consonant and vowel sounds employed by the Chinese and English. There is,

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however, a series of about a hundred words that begin as well as end with vowels; and thus form pure diphthongs. Each of these four hundred and fifty words may be pronounced with three or four different intonations; and has a different signification in consequence. In this way the real number of words may be reckoned at about twelve hundred. Some Chinese grammarians, however, by means of other imperceptible shades and varieties of intonations, extend the number to two and even to four thousand; but the former computation is the usual and correct one.

The written characters, as is well known, express objects, or, considered in reference to the language, entire words; and not simple sounds. The copiousness of these is equally remarkable with the paucity of words. The best dictionaries give the explanation of thirty or forty thousand; and some grammarians reckon the number at sixty or seventy thousand. A great part of them, however, are either obsolete or practically useless; and Mr Remusat, as quoted above, conceives that a person, who is acquainted with two thousand, would find no difficulty in reading. It is obvious, indeed, that the number of characters and of words, actually in use, must be about the same; as every idea of frequent occurrence must have an expression both in writing and speaking.

Of these characters there are six classes, a brief account of which may serve to illustrate the manner in which the language has been formed. The first class consisted originally of signs intended to imitate in a rude way the outlines of sensible objects. Thus the sun was expressed by a circle with a point in the middle; and the moon by a crescent; as in our almanacs. Of these characters there were, as Mr Remusat informs us, about two hundred; and they probably formed the original basis of the written language. The modifications which the forms of all the characters have undergone since the invention of typography, for the purpose of giving them a more uniform and elegant appearance, have in a great measure destroyed the resemblance of this class to the objects they represent; and it is only by researches into the ancient forms of the characters that the analogy can be traced. Thus the circle with a point in the middle, which represented the sun, has taken in modern writing the form of two broad perpendicular lines, crossed by three narrow horizontal ones, or a Roman H united at the top and bottom.

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The second class consists of new characters formed by the union of two or more of the first class for the purpose of representing sensible objects of a different kind. Thus a new character describing *light*, is formed by the union of the two characters denoting the *sun* and *moon;* another expressing a *married woman* by the union of the three, that signify separately *woman*, *hand*, and *broom;* a signal proof of the simplicity of the early notions of this singular nation on the subject of domestic economy. *Tears* are denoted by the union of the characters for *eye* and *water;* and a *song* by those for *mouth* and *bird*. The number of characters belonging to this class is very large.

The characters of the third class are called by the Chinese *borrowed*, or *metaphorical;* and are merely those of the first or second class, diverted from their original use to express abstract notions. Thus the character for *heart* is used metaphorically for *understanding*, and that for *hand* for a *mechanic; man* repeated three times expresses the verb to *follow*. Some of these tropes appear more arbitrary. Thus, *house* is used for *man*, and *chamber* for *woman*. It is remarkable that the German word for *lady* is *Frauenzimmer*, a *woman's chamber*.

The fourth and fifth classes are both very small. The former consists of arbitrary marks expressing for the most part ideas of position or number. Thus the three first numerals are represented by a corresponding number of straight lines placed horizontally; as they were in the Latin mode of writing, by perpendicular ones. A horizontal line with a point above it, expresses *above*, and with a point below it, *below*. The fifth class is composed of a small number of the characters belonging to the other classes placed in an inverted position to express an idea opposite to the original one. Thus the forked animal man is denoted by a character formed of two lines meeting at an acute angle; while the same character placed horizontally expresses the 'counterfeit of man,' *a dead body*.

The sixth class is the most extensive, and contains of itself as large a number of characters as all the rest together. It approaches more nearly than the others to the alphabetic system of writing; and the characters belonging to it are accordingly called by the Chinese *expressions of sounds*. There is

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however this essential difference; that letters are expressions of simple sounds; and as the number of them is very small it requires only a small number of letters to express all their possible combinations. On the contrary the Chinese characters of this class express directly combinations of sounds; and can only be used when the same combination indicates several different things. Thus the word or sound *lee* signifies *place*, and *carp* a kind of fish. Supposing a particular character to express the idea of *place*, and that one was wanted afterwards to express the idea of *carp*, it would appear natural to take the same character, since *carp* is expressed by the same word. On this principle however the same character can never be used to express more different ideas than are expressed by the word to which it corresponds. The principle, as far as it goes, is that of alphabetic writing; and the characters thus formed are expressions of sounds; while all the others are of the nature of picture writings, being expressions of the forms of objects. But as these alphabetic characters do not express the intonations which determine in speaking the particular sense in which a word having several meanings is to be understood, it becomes necessary, in order to supply this defect to indicate the particular sense in some other way; and this is done by uniting to the common character another character analogous to the particular sense. Thus the character corresponding with the word *lee*, when used in the sense of *carp*, is composed of the common character corresponding with this word in all its senses and of the character expressing *fish*. In like manner the word *pa* signifies *white* and a *cypress tree*, and the same character also expresses both these ideas, but, when the latter is intended, the character for *tree* is added to the common character which indicates both. In this way almost all natural objects are expressed by a compound character, of which one part denotes the genus and the other the species; as they often are in our language by compound words constructed in a similar way; such as shell-fish, cod-fish, apple-tree, pear-tree, and the like.

The great superiority of the true alphabetic mode of writing over this system in both its branches is quite obvious; and it seems extraordinary that the Chinese, having once conceived the idea of expressing sounds by arbitrary marks, should not have seen the advantage of applying this method

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to simple sounds, instead of confining it wholly to combinations. This is the more remarkable as the neighboring nations, with which the Chinese have always had more or less intercourse, are all provided with alphabets. If this learned people entertained too much contempt for their Tartar conquerors to think of borrowing from them any new methods in science, they might at least have seen the uses of an alphabet among the Hindus, a nation equally civilized with themselves. Even the Japanese who employ the Chinese character on some occasions have also an alphabet. In this respect, as in most others, the Chinese exhibit such appearances as we might expect in a people which has advanced from barbarism to civilization, without being exposed in any considerable degree to the influence of foreigners. This system of writing is evidently nothing more than an improved form of the first and rudest methods, such as are still employed by the Indians of our own continent. The two hundred original characters, imitated from the figures of sensible objects, form the *roots* or *keys* of the language; and are used as such in the dictionaries; where all the new characters, formed from them by composition or the metaphorical diversion of the sense, are referred to them and classed under them. Such at least appears to have been the original principle of the mode of classification adopted in the dictionaries, although the relation between the derivatives and the radicals may not at present precisely correspond with it in any case.

These are the general features of the Chinese language as written and spoken by the three hundred millions of people, that compose this vast empire. It must be observed, however, that many provinces have their peculiar dialects or modifications of the common language. Besides these there are two forms of the language, called, by Mr Remusat, the *antique* and the *modern style*. They appear to be analogous to the ancient and modern form of most of the European languages, with the difference that the ancient form is still regarded as classical, having been consecrated by the usage of the most celebrated authors. In Europe, on the contrary, the languages have not yet varied much from the form in which they were fixed by the earliest writers of correct taste and distinguished talent. The great antiquity of the civilization of China may serve to account for this difference. Perhaps the

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French and English languages will have varied considerably from their present form two or three thousand years hence and have taken new ones, which will be consecrated like the present by the best usage in conversation and writing. They will then possess, like the Chinese, two distinct forms, both regarded as pure and classical.

The Chinese language is extremely simple and even rude in its construction. Its nouns, pronouns, and adjectives have neither number, genders, nor cases; and its verbs neither voice, mode, nor tense. Every word is immutable in its form; and the ideas expressed in most other languages by inflexions are either denoted by particles or must be gathered from the position and context. Hence a Chinese grammar differs essentially from a similar work in a European language, and reduces itself in a great measure to a series of observations on the use of particular words. It does not therefore admit of abridgment or extract; and we must refer the curious reader to the work itself for further information. We add, however, a few remarks upon some particular points, which relate more immediately to manners than to grammar.

The personal pronouns are commonly omitted, expressions of humility being in general substituted for that of the first person, and of respect for that of the second. In the ancient style, the phrase *little man* is employed instead of the personal pronoun; as in the following passage of a celebrated work, where we should say, *I have the weakness to love pleasure*, the Chinese author has it, *the little man has a weakness; the little man loves pleasure.* In addressing the Emperor, it is common to use the word *subject* instead of the pronoun of the first person; and in written addresses this word is thrown into the margin, and expressed in a very small character. On the same occasion it is usual to substitute for a pronoun of the second person the phrase of *royal palace* or *bottom of the steps*, where a European would say, *your imperial majesty;* as, *the subject has received the bounty of the royal palace*, for *I have received your majesty's present.—The divine genius of the bottom of the steps has united the universe under one government;* instead of, *your majesty's superior genius* &c.*

* The phrase *bottom of the steps* appears rather humiliating than respectful. It is expressed by Mr Remusat in French and Latin by *le dessous des pieds, le dessous des degrés, infra gradus, inferior graduum.* If the translation be correct, the phrase

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In speaking of the emperor in the third person, it is usual to call him the *son of heaven*. An author speaking in the first person commonly gives himself the title of the *stupid fellow*; as, *the stupid fellow is of opinion*, when we should say, *I venture to remark*, or, *in my humble opinion*. In the modern style, now used in conversation, the ordinary substitute for the pronoun of the first person is, *little younger brother*, as for, *how should I know it?—How should your little younger brother know it?* and in like manner for that of the second person, *elder brother*, even in speaking to a younger man. *What my elder brother says is very true*, for, *what you say is very true*. Sometimes the phrase substituted is in a more elevated style, as the *noble horseman*, or the *venerable senior*, in addressing a person of distinction. In the same way the possessive pronouns are expressed by circumlocutions of humility and respect; as the *little wife* for *my wife*, the *poor name* for *my name*; the *cold house* for *my house*. Thus; *the cold house is not more than seventeen or eighteen lees off*; for *my house* &c. *The noble elder brother* for *your elder brother*; *the noble hall* for *your mother*; *the noble thousand pieces of gold*, meaning *your infant daughter*; *the noble beauty*, *your daughter*; *the respectable garment*, *your cloak*; *the honorable chariot* for *your carriage*. The last phrase is also one of the substitutes for the simple pronoun of the second person. Thus, instead of, *do you go to town to day?* a Chinese might ask, *does the honorable chariot proceed to town to day?*

The poetry of the Chinese is constructed on the principle of rhyme like that of modern Europe. It is generally written in stanzas of four verses, three of which must rhyme together. The verses consist sometimes of five and sometimes of seven syllables, that is, words; and the arrangement of them is subject to certain rules having reference to the intonations with which they are pronounced. This system must be nearly similar to ours; as accents and intonations are in substance the same thing. In the present state of our knowledge upon the subject, we have not, however, the means of instituting an

probably contains an allusion, which we do not feel. It is not unlikely, however that it should be understood metaphorically, *bottom* being used for *cause*, and *step* or *degree* for *dignity*, as with us. It might then be translated by *fountain of honor*, a title commonly applied to the monarchs of Europe.

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exact comparison between the modes of versification employed in China and our own. The poems of this nation are in general short, and written in a highly figurative and elliptical style. The following *morceau* is extracted from one of the sacred books. It appears at first reading to be of an amatory cast; but the critics of China consider it as typical of certain truths in political philosophy, having adopted, as a principle of interpretation, that every part of the sacred writings must contain some allusion to politics, which they esteem as the noblest branch of knowledge, or, in their own phrase, as the *great science*. The poem in question is as follows.

'The north wind chills the air; the snow falls in large flakes. Oh that the kind being, who loves me, would put his hand in mine, that we might walk together! How can he stay away so long? He ought already to have made haste to visit me.'

The following poem is extracted from a novel, and is perhaps interpreted in an amatory sense; although it seems to us to contain more philosophy than the other. For a work so short the subject is changed rather more frequently than the rules of European composition would admit.

'The contents of the six classical books have their origin and foundation in the heart of man. Offensive and sarcastic remarks may be expressed with so much elegance as to become agreeable. The universe is a stage, and the business of the world is nothing but a long comedy. The conduct of human affairs in all ages furnishes in truth a curious spectacle.'

With these extracts we close our remarks upon the book before us. Mr Remusat, as we stated above, expresses a high opinion of the value of the literary treasures contained in the Chinese language. It is not probable, however, that he would expect from this quarter any great accession to our stock of knowledge in any of the branches of positive science, or even any models in literature and the arts superior to those we already possess. However little we may really know of the state of learning of the Chinese, it appears certain that they have no pretensions in this respect to an equality with the European world. Mr Remusat must therefore be understood to mean that great advantages of some other kind will result to the cause of science and letters from a diligent cultivation

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of Chinese literature; and in this sense the remark is undoubtedly true.

For in fact it is in this way and in this only that we can attain to a complete acquaintance with the history of this vast empire in all its branches; and when we consider that about half of the inhabitants of the globe, during the period of which we have any historical accounts, have been Chinese, this object must appear of great importance to the philosophical student. In the nations that occupy the most eastern part of the ancient continent, of which China is the principal, we have a second civilized world, much more ancient and populous, in some respects probably happier and wiser, although at the present moment less advanced in art and science, than the one with which we are acquainted; and varying from the latter in greater or less degrees in almost every important particular. The civilization of all the countries west of China, including India, Persia, Egypt, Greece, Rome, and modern Europe, may be traced without difficulty to a common origin. That of the Chinese, if, as is not impossible, it sprang at first from the same stock, was so early separated from it, that it took an entirely different direction, and has always formed an independent system. Thus the cultivated moral world divides itself into two great sections. The student of man who has directed his attention to only one of them has examined but half his subject; and has no means of comparing the two parts together, although such a comparison is probably the surest test of truth, to which we can bring the conclusions in regard to either that may be drawn from direct study. Considered in this point of view, the importance of Chinese literature, however highly it may be estimated, can hardly be overvalued.

We shall not, however, be understood to mean that every inquirer after moral and political truth is bound to become a student of the Chinese language. It is only necessary that this language should be considered as one of the branches of liberal knowledge; and should be cultivated by such persons as feel a particular vocation for it. The fruits of their researches would of course be communicated to the world in the dialects that are known to every accomplished scholar; and would thus afford to all the opportunity of making observations and drawing conclusions according to the measure of

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their talents. Notwithstanding the experiments of the late Judge Winthrop of Cambridge toward simplifying the printing of the Chinese character, our country does not at present afford the materials for prosecuting this study; but there is no part of the European world, with the exception of England, and perhaps of Russia, where it would be so easy to supply this deficiency; since there are no others which carry on so extensive a commerce with China as this city and its immediate vicinity.

ART. II.—*Lectures on Physiology, Zoology, and the Natural History of Man, delivered at the Royal College of Surgeons, by William Lawrence, F. R. S. Professor of Anatomy and Surgery to the College, Assistant Surgeon to St Bartholomew's hospital, Surgeon to Bridewell and Bethlehem hospitals, and to the London Infirmary for diseases of the Eye; with twelve engravings.* London, 1822.

THIS work has excited more general attention, than is usually enjoyed by treatises on similar subjects; partly on account of the opposition, with which the author's attempt to publish it was encountered and which seems therefore to have been ill-judged, and partly from a certain cast of radical or levelling principles, with which it is tinctured.

The first part of it is occupied by four lectures, one of which contains a reply to the charge brought against the author by a brother lecturer, Mr Abernethy, of having 'perverted his office to the very unworthy design of propagating opinions detrimental to society, and of endeavoring to enforce them for the purpose of loosening those restraints, on which the welfare of mankind depends,' and a defence of certain opinions advanced in former lectures. The other three consist of general views of the nature, utility, and proper objects of physiology and zoology. The remaining and by much the largest portion of the work is devoted to the natural history of man. It affords a good view of what has hitherto been done in relation to this very interesting subject, together with the author's particular opinions concerning it.

We think this latter part, with some exceptions, will be found both agreeable and useful to the general reader; but as

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the book is not common in this country, we can refer him to the article 'Man' in Rees' Cyclopedia, which contains nearly the same matter, and was, we believe, contributed by Mr Lawrence.

When we hinted above our disapprobation of the kind of opposition, which these lectures have met with, we were far from intending to imply that they contain nothing objectionable; on the contrary, we regret that gentlemen of the ability and industry of Mr Lawrence should adopt or attempt to promulgate some of the opinions expressed in them. We object to the nature of the opposition, because it ought to have been foreseen that it would be ineffectual and worse than ineffectual; that it would only serve to give currency to these opinions among that very class of society to which they are likely to do most injury; that the consequence of disallowing Mr Lawrence's claim to copy-right, and obliging him to relinquish the publication, would be, that twenty or more booksellers could publish instead of one, and at a smaller expense than if they had purchased the copy; and that a work which, from the nature of the title page, the expense of literary property, hot-press, and copperplate engravings, would have been found only in the libraries of the wealthy or the scientific, is now inundating London in every variety of cheap dress and embellishment, which the experienced typographers of that metropolis can devise; and that its coarse editions are circulated among all classes of the community from hundreds of obscure book-stalls, and hawked at the corners of the streets in sixpenny numbers.

Leaving, however, the further consideration of this matter to those whom it may concern, we proceed to remark upon the opinion that has excited so much attention and so much hostility against Mr Lawrence, namely, *that the notion of an immaterial soul is opposed to the evidence of anatomy and physiology.*

This conclusion, with certain corollaries which he chooses to draw from it, must be acknowledged to be somewhat uncomfortable, and would be still more so, if we did not recollect that some honest and learned men have in times past been led by mistaken reasoning to believe and teach the doctrine of materialism, without doing so much injury as might have been expected either to themselves or their neighbors; just as phi-

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losophers have demonstrated again and again, that free agency is impossible, while they and all they world continue to act according to their inclinations.

We may be permitted to regret that our author had not studied more diligently the work of Dr Brown on Cause and Effect, which he quotes in terms of high approbation, since his reasoning might possibly have thus been freed from occasional confusion, and partaken less of that character, which is best described by the epithet *rambling*. As it is, we are pleased that he has alluded to it in the manner above-mentioned, as we are thus enabled to take the principles laid down in that work, which our readers may remember we had occasion to review in a former number, as mutually acknowledged.

A cause, then, being 'that which immediately precedes any change, and which, existing at any time in similar circumstances, has been always and will be always immediately followed by a similar change,' it was incumbent upon Mr Lawrence to show that similar organization in similar circumstances always produces similar phenomena, and conversely, that vast disparity of intellect is always accompanied by proportional difference in the organs, of which he assumes that the mental processes are functions. Demonstration in cases of this kind is hardly to be expected, but if in a single instance it is shown that similar, or nearly similar organization is accompanied with immense difference of intellect, it must be allowed to be probable, that the manifestations of mind are not the immediate consequents or effects of such organization, but of some intermediate link; and this probability will be stronger, in proportion as such instances are more numerous. The probability of something existing 'beyond our ken' is all that is necessary for our present purpose, and that no such probability, but the contrary, results from anatomical and physiological inquiries, is the position which our author endeavours to maintain; and in support of it the general doctrine of the correspondence of the mental phenomena with material arrangement is considered in three several points of view. The first regards the same individual of the human race at different periods of his existence. Our author expresses himself thus:

'These organs' (those within the skull) 'begin to be exercised as soon as the child is born; and a faint glimmering of mind

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is dimly perceived in the course of the first months of existence; but it is as weak and infantile as the body. As the senses acquire their powers and the cerebral jelly becomes firmer, the mind gradually strengthens, slowly advances with the body, through childhood to puberty, and becomes adult when the development of the frame is complete; it is, moreover, *male or female according to the sex of the body.* In the perfect period of organization, the mind is seen in the plenitude of its powers; but this state of full vigor is short in duration, both for the intellect and the corporeal fabric. The wear and tear of the latter is evidenced in its mental movements; with the decline of organization, the mind decays; it becomes decrepit with the body; and both are at the same time extinguished by death. What do we infer from this succession of phenomena? the existence and action of a principle entirely distinct from body; or a close analogy to the history of all other functions?' p. 94.

'Where then shall we find proofs of the mind's independence on the bodily structure? of that mind, which, like the corporeal frame, is infantile in the child, manly in the adult, sick or debilitated in disease, phrensied or melancholy in the madman, enfeebled in the decline of life, doting in decrepitude, and annihilated by death. Take away from the mind of man, or from that of any other animal, the operations of the five external senses and the functions of the brain, and what will be left behind?' p. 6.

This view our readers will immediately perceive to be similar to that in which this subject was regarded by Dr Priestley and other materialists. We do not perceive that Mr Lawrence has added any thing important to the arguments produced by those writers. The extracts we have given are pretty fair specimens of his mode of reasoning, which we conceive to be not likely to carry with it such irresistible force as he seems to expect. The passage in Italics we consider a remarkable assertion, if intended, as it must be, to be received as universal. We have never met with any exact definition of a *male mind*, but are humbly of opinion that such females as Boadicea, Margaret of Anjou, and others, or within our own knowledge a revolutionary heroine, now we believe on the pension list of the United States, were actually in possession of an article of that description; and that the renowned Chevalier D'Eon, during his or her life, might have puzzled our confident physiologist quite as much as the said Chevalier's contemporaries, and bid defiance to the most approved mode of craniological examination.

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Moreover, it would have been as well, if our author had informed us whether the *cerebral jelly* became softer again as the mind returned to second childhood; a point which, the fact being otherwise, he does not think it necessary to settle. To the question in the last paragraph of the extracts, we are ready to reply, whenever Mr Lawrence can satisfy us what the functions of the brain are, without begging the question in dispute, or relinquishing his favorite doctrine.

But it is plainly unnecessary to examine separately the force of the several arguments, or assertions under this head. They prove sufficiently what was never doubted, that the varieties of organization, whether original or accidental, exert a powerful influence upon the mental phenomena; but the point which they are supposed to prove, namely, that these phenomena are the result of material arrangement, is wholly incompatible with the mental identity of individuals. We hold with Dr Brown, that the belief of one's personal or mental identity is one of those impressions, which, being '*universal, immediate, and irresistible,*' are antecedent to and beyond the influence of any process of reasoning; that the fact of this identity is one of which we have as good evidence as we can have of any thing that we know; that all mankind believe this because they cannot help it; and that, since it is thus certain that the mind of any individual continues the same, whether his cerebral jelly be hard or soft, shooting out into fungi, distended and macerated by serum, excavated by abscesses or apoplectic effusions, or, by the natural processes of absorption and nutrition, disintegrated and repaired like the bark of the Argonauts till no part of the original composition remains; this cerebral jelly is not the mind, but the nidus, or, to pursue the metaphor, the bark that bears, and is directed by a nobler being.

We leave this old and beaten field of controversy, to proceed to the arguments drawn from the various minds and dissimilar structure of different individuals, or races of mankind. To enable such of our readers, as are unacquainted with anatomy, to appreciate the force of these, we premise that all such brains are, in a general view, alike in the formation of the whole or of any particular portion. Except in a comparatively small number of cases of monstrous formation, or alteration by disease, it is not pretended that any part or process is dif-

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ferent in different individuals, any otherwise than in point of relative size, nor that the relative size of any particular portion can be shown to correspond with the relative power or excellence of any particular faculty. This last position, indeed, is supported by Doctors Gall and Spurzheim, but of the doubtful authority of these writers, we shall speak hereafter; it is sufficient for our present purpose that our author does not found any argument upon their supposed discoveries, but speaks of them, as resting hitherto upon their authority alone. The only difference, which he depends upon in this division of his subject, is the greater or less development of the cerebral hemispheres. Which development, as it relates only to the form of the upper part of the brain, we may illustrate by observing, that the upper outline of the profile of a skull, in which the hemispheres are most developed, will be more rounded upwards than that of any other, and that a high and upright forehead and rounded skull indicate great development, whilst a low, retreating forehead and flat skull are evidences of the contrary. Nothing more, therefore, is meant by this development, upon which so much stress is laid by our author, than that an individual of high intellectual powers has a larger head, in proportion to the face, than one of inferior capacity. That this is not universally true, any man may satisfy himself by examining the heads of his acquaintance; indeed it seems too obvious to require any other evidence than the most common observation; and the following quotations may seem to many of our readers altogether superfluous.

'The exceptions to this general rule, that men of most genius have the largest head, have been so numerous, that many have doubted its truth.'—*Richerand's Physiology.*

'Opportunities have been afforded me of examining the brain in a considerable number of persons of high standing in our country, and such as were remarkable for talents. In some instances it has appeared that a large brain had been connected with superior mental powers; in about as great number, the reverse; and one individual, most distinguished for the variety and extent of native talent, had an uncommonly small brain.—*Warren on the Sensorial and Nervous Systems.*

As to the difference in this particular between males and females, very acute anatomists have been unable to detect any. Soemmering, however, asserts, that the head in women

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is larger and the brain heavier than in men, but as the individuals were of equal size, it is evident that he was comparing the brain of a tall woman with that of a short man; not to mention that the consequence of this sort of difference, according to Mr Lawrence's theory, would be rather unpalatable, and one to which we should not be desirous, for obvious reasons, to give currency.

We take occasion here to express our annoyance at the frequent recurrence of the words 'develop,' and 'development,' in this work. We believe these terms were introduced into fashion by Dr Gall and his disciples; they may occasionally be useful, but to meet them at every turn, when simpler terms are equally eligible, is really distressing. We can assure Mr Lawrence and some other modern writers, that to tell us, that the tail of an animal is long, or his teeth large, would be quite as intelligible and a great deal more agreeable, than to say that these appendages were more *developed*.

We come next to the consideration of a subject, which occupies a large portion of the lectures, and which, considered in all its bearings, is one of the most curious and interesting in the natural history of man. We mean the different families or races of mankind. Blumenbach, who is universally admitted to be the first authority on this subject, proposed to arrange the several tribes of our species under five great divisions or varieties; viz. the *Caucasian*, or white variety, supposed to have originated near Mount Caucasus, and comprehending the Georgians, Circassians, Turks, Jews, Arabians, Moors, Greeks, and the European nations generally; the *Mongolian*, or olive, comprehending most of the Asiatics; the Calmucs, Chinese, Japanese, Hindoos, Laplanders and other inhabitants of the hyperborean regions; the *African*, Ethiopian, or black, comprehending all the inhabitants of Africa, except those already mentioned as belonging to the white variety; the *American*, or red, containing the greater part of the inhabitants of our continent; and the *Malay*, island, or tawny race, who inhabit the islands of the Pacific, Southern, and Asiatic oceans. Of these, the Caucasian ranks highest, according to Mr Lawrence, in the scale of intellect; next to this on the one hand, if we understand him, comes the Malay, and on the other the American; to the former succeeds the Mongolian, and to the latter the Ethiopian; the original or white

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race deviating thus into the two extremes of inferior capacity. We are not certain however that is a correct representation of his opinion, as there is much obscurity and some inconsistency in his representations of this matter. Thus, at page 476, he observes, that 'the Malay comes in between the Caucasian and Ethiopian,' but at page 431, 'that of the dark-colored races none approach more nearly than the negro to the polished nations of the globe.'

Amidst the variety of discussions, which arise from the consideration of these different races we are continually meeting with inferences in support of the favorite doctrine, and one whole chapter, 'on the differences of their moral and intellectual qualities,' is entirely devoted to it. We refrain at present from any extracts, but shall state only the general argument, which is, that the white are, and always have been superior to the dark races in mental improvement and the arts of civilization.

The full consideration of this argument would require a volume, and as our author excuses himself from entering into it more minutely, 'from want of the necessary information, as well as the limited length of his lectures,' we shall, for similar reasons, decline the task, and with the less reluctance, as it seems impossible in the present state of our knowledge, or perhaps ever, to determine the degree of influence which is exerted on the mind by the circumstances of government, soil, climate, language, food, and vegetable or animal productions. The instances of China, Peru, Mexico, Hayti, and in our own country the Cherokee nation, are sufficient to show that the dark races are susceptible of improvement, and that, in as favorable circumstances, they could not advance as far as the whites, is an assumption which is opposed to the analogy of individuals of those races. A striking instance of the great influence of government and peculiar form of society in opposition to *Caucasian* formation is afforded by the clans of the Scottish Highlands, many of whom were, within the memory of individuals now living, in a state of the most deplorable ignorance and barbarism, nearly resembling that of some of the savage tribes of our own country, and this too while they were scarcely a day's march from four universities.

It is granted that there are all varieties of form in the skulls of different individuals of the same race, and that the peculiar

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characteristics of this part in all the varieties run into each other by such imperceptible gradations, that in examining a considerable number of them it would be scarcely possible to decide with certainty, to which of the five, each and every individual had belonged; and this difficulty cannot be better illustrated, than by the fact that Mr Lawrence, at page 307, ventures to dispute the opinion of such a veteran gauger of skulls, as Camper, in relation to a particular individual which the latter considered a Mongolian and the former assures us is an Ethiopian; the two extremes of variation.

Certain tribes of the dark families increase the natural and congenital flatness of the skull by artificial means; but it does not appear that any deterioration of mind is thus produced. We have the evidence of Lewis and Clarke to the contrary, in their account of the flat heads of the Columbia river; of Dr Warren in that of a boy from the Queen Charlotte islands, and of Mr Lawrence himself in his remarks upon a Carib skull from the island of St Vincents, which had undergone this process. This individual 'had been chief of the Red Caribs, was well known in Tobago, and regarded there as an intelligent, well-informed, and prudent character.' p. 324. We think his 'inch of brain,' if it was in the 'right,' was certainly not in the usual place.

Further, it is not pretended that those individuals of the black races, who have at any time distinguished themselves by evidences of great natural powers of mind, had skulls of a Caucasian formation. On the contrary, two at least of the four individuals selected as specimens of the several black races, are noticed as having given evidence of considerable intellectual vigor, one especially, J. J. E. Capitein, an African, wrote sermons, poems, and a Latin book, which went rapidly through four editions, and that, we assure Mr Lawrence, is what many a good Caucasian head would find a very difficult matter. Such instances are incompatible with the doctrine we are opposing; exceptions which, instead of strengthening, destroy the rule.

The third point of view in which the notion of mental and material correspondence may be examined, is in relation to the whole animal creation.

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'The mind of the negro and Hottentot, the Calmuc and Carib, is inferior to that of the European, and their organization is also less perfect.

'The gradation of organization and of mind passes through the monkey, dog, elephant, and horse to other quadrupeds; thence to birds, reptiles, and fishes, and so on to the lowest links of the animal chain. In ascending these steps of one ladder, where shall we find the boundary of unassisted organization? where place the beginning of the immaterial adjunct? in that view that assimilates the functions of the brain to those of other organic parts, this case has no difficulty. p. 95.

'We see some (animals) sagacious and docile, capable of instruction, exhibiting mental phenomena analogous to our own; the germs or imperfect state, of what when more developed is human intellect.' p. 41.

But is this a fair statement? is there any such gradation except in a very general view? Was the difference between Newton and his dog Diamond only in degree? Compare one of the lowest in the scale of humanity, according to Mr Lawrence, a deaf and dumb Mongolian child, with the Chimpanzee or the *Man* of the Woods; will he pretend that the Abbé Sicard could teach the latter to read and write, to communicate abstract ideas by signs, give him the notion of a Deity, or the moral relations? Can one conceive of any possible process by which such *development* could be accomplished? The beaver and the bee want neither schools nor colleges to teach them to construct ramparts or geometrical cells, whose adaptation to their purposes excite our admiration; but in these things they neither deteriorate nor improve; there is no gradation, no apprenticeship; the cells of a new swarm are as perfectly hexagonal as those of the most veteran inhabitant of the hive; and all are the effect of a blind instinct, or rather of a single and overruling mind, of which these forms of matter are but the instruments—the puppets, whose movements betray the master-hand, though the connecting wires are too delicate to be detected. But the essential differences between the displays of instinct and of mind are too obvious to require further illustration. Nothing seems to us clearer than that this doctrine of gradation, however plausible in the general, can never stand the test of individual comparison. We shall only add the words of our author, in another part of his work:

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'Man stands alone: his faculties, and what he has effected by them, place him at a wide interval from all animals.' p. 204. 'The points of difference between the Negro and the European do not affect those important characters, which separate man in general from the animal world; the erect attitude, the two hands, the slow development of the body, *the use of reason and consequent perfectibility*, are attributes common to both.' p. 484.

There is then a wide gap in the scale; a difference, not in degree only, but in kind, between the mental phenomena in man and the displays of instinct in animals, and that so evident, that the vulgar never confound them. None but a philosopher mistakes a man, however humble his intellect, for an improved variety of monkey, or thinks of searching for the vestiges of a tail. We are next therefore to inquire, if there is a corresponding vacancy in the chain of organization; any striking or uniform difference, or any organs, or parts of organs, enjoyed by man, which are not common to him and the four-handed or four-footed tribes; and since the brain is the organ of which the intellectual phenomena are supposed to be functions, it is here that we are to seek for this difference.

'In spite of metaphysical subtlety, of all the chimeras and fancies about immaterial agencies, etherial fluids, and the like; and all the real or pretended alarms so carefully connected with this subject, the truth, that the phenomena of mind are to be regarded physiologically, merely as the functions of the organic apparatus contained in the head, is proved by such overwhelming evidence,' &c. p. 164.

Now the result of this examination and the great similarity between the brain of man and that of the higher orders of animals, even from our author's own account of the matter, seems to us so decidedly unfavorable to his position, that we cannot help suspecting that in this point 'his wish was father to his thought.' It is found that the human brain has no part, which is not present in some animal; that it is not specifically larger, nor larger in proportion to the body, than that of all other animals; the elephant excels us in the first respect, and several birds, beasts, and even fish, in the latter. The only differences, which the comparative anatomist has hitherto been able to discover, are, that the human brain has its upper outline more rounded upwards, the convolutions of its surface somewhat deeper, and the bulk of the whole greater in proportion

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to the size of the nerves that issue from it. With respect to these differences, we remark, first, that those who will compare the plates of the skull and brain of the orang-utang, in the work of Dr Tyson, the best authority on this subject, with those of the same parts of the human structure in any anatomical work, will be satisfied that they are of more magnitude and importance to the theorist, than the sincere inquirer after truth; and the following comments of Tyson himself, who had no hypothesis to support, may satisfy those of our readers, who have less curiosity, that they are neither 'prodigious,' 'wonderful,' nor even very obvious.

'From what is generally received, viz. that the brain is reputed the more immediate seat of the soul itself; one would be apt to think, that since there is so great a disparity betwixt the soul of a man, and a brute, the organ likewise, in which it is placed, should be very different too. Yet by comparing the brain of our pygmie, with that of a man; and with the greatest exactness observing each part in both; it was very surprising to me to find so great a resemblance of the one to the other, that nothing could be more. So that when I am describing the brain of our pygmie, you may justly suspect I am describing that of a man, or may think I might very well omit it wholly, by referring you to the accounts already given of the anatomy of a humane brain, for that will indifferently serve for our pygmie,' &c. Again, 'The anfractus (convolutions) of the cerebrum were alike, as also the substantia corticalis and medullaris. On the basis of the brain, we may view all the ten pairs of nerves exactly situated and placed as in a human brain; nor did I find their originations different, or any particularity that was so.' *Tyson's Anatomy of a Pygmie.*

We have chosen to take the comparison of the human brain, with that of the orang-utang, as a strong illustration of the futility of Mr Lawrence's argument. We might go on to show, that the brains of all the mammalia, of birds, and even of fishes, are marked by a resemblance to that of man, which is surprising to those, who have regarded the latter only as the remote cause of the mental phenomena; and which is any thing but hostile to the doctrine, which supposes the existence of some cause of these phenomena, other than any material arrangement. But we consider this illustration sufficient for our present purpose, leaving our readers to decide whether it is philosophical or natural to conclude that those

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faculties, which place their possessor but 'a little lower than the angels,' are but the active state of organs, which he has so nearly in common with orang-utangs, pongos, monkeys, and the rest of the tribe of disgusting caricatures of the human species.

But the first of these differences, the 'development of the cerebral hemispheres,' and consequent upward rounding of the skull, is the same in kind and not very different in degree, whether we compare the Ethiopian with the Caucasian, or the orang-utang with the former. Some writers have even contended, that the difference in this respect is less in the latter case. But the abominable inference, which has sometimes been drawn from this resemblance, is resisted by our author with laudable energy.

'I do not hesitate to assert, that the notion of specific identity between the African and orang-utang, is as false, philosophically, as the moral and political consequences to which it would lead are shocking and detestable.' p. 108.

But why is this notion so absurd? because the Negro is gifted with the 'use of reason and consequent perfectibility.' The gradation of mind, then, in this part of the chain, is interrupted while that of organization is regular; on the other hand, comparative anatomy teaches us, that of all the mammalia, the ape and monkey tribes alone possess in common with man the posterior lobes of the cerebrum. Here the gradation of organization is in its turn interrupted, without being accompanied by any corresponding interval in that of mind. For if we allow the properties of mind to exist in any degree, in any species but our own, it will hardly be pretended that the beaver, the dog, or the half reasoning elephant, are very remarkably inferior in the display of them, to the above-mentioned antic generations.

With respect to the second point of difference, we observe, that the convolutions of the brain are to be found in the hog, whilst they are entirely wanting in an animal, whose shrewdness is almost proverbial, we mean the common rat.

The third circumstance, the larger size of the human brain in proportion to the nerves that issue from it, we consider first as a sort of forlorn hope. It was long asserted that the human brain was absolutely the largest; then that it was so in propor-

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tion to the body; then that it was so, when compared with the cerebellum or medulla oblongata; but to all these were produced exceptions. The comparison with its nerves was at last resorted to as the only tenable point. But this statement of the difference is a sort of inversion of the truth, which is, that the nerves of animals are, in general, larger than human nerves in proportion to their brains, and this might have been expected *a priori* in conformity with the general rule, that every organ is more extensive, as the function which it serves is more perfectly executed. Thus the muscles of animals, being proportionally more active than those of man, the nerves going to the muscles should be larger, and this is well illustrated in the large nerves of motion in the carnivorous animals. The senses also in animals are generally more perfect than in man, and the nerves larger. When this is not the case, they are proportionally small, as in the whale tribe, where the blowing holes occupy the place of the nose, the olfactory nerves are so small that their existence has been denied by great authorities in comparative anatomy; and the optic nerves of the mole are about the size of hairs and cannot be traced to the eyes. The nerves being the conductors of external impression to the brain, and of the effects of volition on the brain to the skin, muscles, &c. we should expect them to be large where sensibility is great and motion quick, and this appears a sufficient explanation of the fact which Mr Lawrence produces in support of his theory, viz. that the nerves are, in the fœtus and child, proportionally larger than in the adult. It may be asserted, though it can hardly be proved, that the fœtus has not great sensibility, because it would be unnecessary. But allowing this to be the truth, it may be replied that, as it would be manifestly contrary to all analogy to suppose, that these nerves are in a few hours, or even minutes, increased, or as our author would say, developed, to the size in which they appear in the child, we must conclude that they are prepared beforehand for the offices, which they are so soon to be called on to perform. Finally, the importance of this proportion between the brain and nerves, depends 'upon an assumption that a certain bulk of nerve requires always the same proportion of brain for the execution of its office—a datum by no means self-evident.' p. 169.

We pass over those pretended cerebral differences, which our

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author either alludes to, without specifying, or acknowledges to be untenable, to notice the argument drawn from the difficulty of explaining the manner and time of the connexion of an immaterial soul with the body. As this argument is an old one, and derives no additional force from anatomy or physiology, it is unnecessary to notice it farther than to observe that the difficulty is none of our making; that, finding no material arrangement which, according to the premised definition, can be considered the immediate cause of the mental phenomena, we conclude that this cause is not material. This conclusion cannot be affected by our inability to explain the manner in which a cause, of which we profess to know nothing but the effects, should produce those effects. To such sneers as the question 'whether the brain of the homunculus of eight days old is too small a tenement for the etherial lodger,' the reply is, we are ignorant, and what is more disagreeable, are pretty certain to continue so.

That the soul is only known to us by bodily manifestations is an argument of as little force; it seems impossible, from the nature of the case, that it should be otherwise with the souls of others, to which alone the objection applies.

On the whole, we are of opinion that Mr Lawrence has adopted an hypothesis from certain general views, which is by no means confirmed by a closer investigation, and that the existence of a cause of the phenomena of mind, distinct from mere matter, so far from deriving its only support from revelation and the general belief of mankind, as our author insinuates, and being opposed to, or differing from the opinion we should derive from the study of anatomy and physiology, will be continually strengthened by our increasing acquaintance with those sciences.

Another subject which we think proper to notice, is the notion of Life. The word itself is a collective term, embracing in its signification the ideas of all those circumstances which are peculiar to one of the two great divisions of sensible objects. There is none exactly opposed to it, unless we may be allowed the use of such an one as *inanimation;* death not being sufficiently comprehensive, since it is commonly applied to beings, which have at some time displayed the phenomena of life.

It is evident, therefore, that the term will mean more or

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less, according to circumstances. Thus, in common conversation, we include in it only a few obvious qualities of the being spoken of, as motion, warmth, respiration &c. if an animal, or verdure, succulence, &c. if a tree or shrub. In a physiological view, it includes many more particulars, such as growth by nutrition, coexistence of solids and fluids, opposition to chemical affinities, &c. or the possession and integrity of organs adapted to those purposes, in other words, organization. When we say that any being has life, it is plain that we mean no more than that it is organized. Organization, therefore, is the invariable antecedent of the living phenomena, and whether such organization be more or less perfect or extensive in one being than in another is of no consequence; the fact, that it is organized, is sufficient to place it in the class of animated beings.

To interpose any thing between these circumstances, organization and living phenomena, is unphilosophical, because it is unnecessary. The *archeus*, the *materia vitæ diffusa*, the *spirit of animation*, all these may be realities; we cannot prove the contrary; but we do not know that they are so and see no reason for supposing it gratuitously, when their existence, if granted, evidently adds nothing to the sum of our knowledge, beyond the single fact. It explains nothing and removes no difficulty. We therefore cordially agree with Mr Lawrence, that such fancies are useless, and worse than useless; that each in its turn has been the *ignis fatuus*, that has plunged its deluded followers in the mire; 'the fatal Cleopatra for which many a powerful mind has lost the world and been content to lose it;' that they have obscured the records of science with vain imaginations, and rendered the study of many a voluminous author equally profitable with the labor of him, who seeks for two grains of wheat in two bushels of chaff; and we trust that the period is not far distant, when these opprobria of science, and particularly of medicine, shall rest forever with the substantial forms, the entities and quiddities of our fathers.

A consequence of our author's notions respecting the mind, is an occasional confusion of the ideas of this and of life. This is in one instance shown by an improper attempt at ridicule. Speaking of the hydra, or fresh-water polypus, each part of which, when cut in two, becomes a perfect animal, he asks, 'if the soul can thus be divided with a knife?'

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In the commencement of the inquiry, whether all the varieties of the human family are probably descended from the same or different original stocks, are the following passages.

'This disquisition will perhaps be deemed superfluous by those who regard the Hebrew Scriptures as writings composed by the divine inspiration &c.'——'But the entire or even partial inspiration of the various writings comprehended in the Old Testament is doubted by many persons &c.' p. 215.

with several others of a similar nature, and a sufficiency of biblical criticism in the notes to this chapter. Now the result of this inquiry being entirely consonant to the account given in the scriptures, namely, that the whole human race did derive their origin from a single pair; this discussion of the inspiration of the sacred writings was unnecessary, and so far reprehensible, as it was likely to give offence to many readers. We were reminded by it of an opinion expressed towards the beginning of the work, namely; that

'Divinity and morals however excellent in their time and place, do not exactly suit the theatre, audience, or subjects of these lectures.' p. 8.

As some of our readers may be curious to know something of the nature of the arguments, produced from natural history in support of the belief that all men have descended from the same stock, a position which, at first view, seems improbable, and the more so, to those who believe, with our author, that differences produced by climate and other external circumstances are confined to the individual, we shall endeavour to give a concise account of it.

Any number of animals, that are characterized by the same fixed and definite external forms and constant and permanent difference from all others, are considered as belonging to the same species; but this notion of species admits of some variations in individuals. These in wild animals are commonly slight, being confined to differences of texture and color of the fur, length of the mane, tusks, &c. In domesticated animals they are much more numerous and important, and by the contrivance of man are perpetuated, varied, and aggravated, till the original stock becomes doubtful, as is remarkably the case with the dog.

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What amount and kind of difference may be fairly considered the effect of accidental deviation without implying specific difference, has been frequently a question, and several tests of identity of species have been proposed, but have been found insufficient, and that particularly when applied to domesticated animals, where their assistance is most needed. Analogy and probability, therefore, can only be depended upon in determining questions of this kind, and the rule proposed by Blumenbach seems to be the best, namely; that when we find the difference between individuals, that agree in general, to be not greater than we know to be sometimes produced by accidental circumstances, it should be considered as denoting only a variety of the same species. Man is eminently a domesticated animal and exposed in the greatest degree to the various effects of such a mode of existence, and among others to variations in the appearance and structure of individuals. When, therefore, we find, as may be sufficiently proved, that 'there is no point of difference between the several races of mankind, which has not been found to arise, in at least an equal degree, among other animals as a mere variety, from the usual causes of degeneration,' (p. 232,) it is conformable to the rule to presume that these races are but varieties of one species, the original characters of which are generally supposed to be present in the most perfect individuals of the Caucasian formation. This presumption will be strengthened by the accounts of Albinos, porcupine men, and families with six fingers on one hand; since there cannot be the smallest doubt, that if it were possible and allowable to practise with such persons the same expedients, as are employed with the common domestic animals, varieties might be produced, which, in point of difference from the Caucasian formation, should vastly exceed those of which we have any knowledge. Mankind then, being all of one species, may have descended from a single pair; and since nature does nothing in vain, it is the part of philosophy to believe that they did so.

Though the general tone and manner of the Reply to the charges of Mr Abernethy are not pleasing, it is some excuse for Mr Lawrence, that he was provoked by the harshness of the attack, and tempted by the feebleness of the reasoning in many parts of it. Weak and unphilosophical, however, as many of Mr Abernethy's arguments were, we think the charge 'of

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having propagated opinions detrimental to society,' is not sufficiently disproved, or rather that good ground for it may be found in these lectures. The doctrine of materialism we believe to be such an opinion, since it leads to conclusions which are incompatible with peace and good order, to say nothing worse of them. It is true that our author asserts only that this doctrine is true, *physiologically*, or that it is the result which we arrive at from the study of physiology and anatomy only; but this, if it were the fact, would be a powerful argument for the truth of materialism, considered in any other light, as well as in a physiological one; and he should not have adopted a position likely to be so extensive in its bearings, without deeper investigation of its probability and possible influence. We agree, however, with Mr Lawrence, though for different reasons, that a greater outcry has been raised against him, than was at all necessary. We can assure those who tremble at the prospect of 'the final accomplishment of his grand purpose, the complete emancipation of the mind, the destruction of all creeds and articles of faith, and the establishment of full opinion and belief,' that there is not the smallest danger that it will ever be accomplished. It implies a revolution, not in external circumstances only, but in the very nature of man, which will be effected when all mankind are wise and good,—and not till then.

We are sorry to observe, at p. 78–9, a sneer at an opinion of Mr John Hunter. For obvious reasons we do not extract it; but our physiological readers, who may choose to consult the work will perceive that it is founded on a misrepresentation of Mr Hunter's reasoning, and that the evidence of comparative anatomy respecting the gall-bladder, as referred to in the latter part of the paragraph, strengthens instead of weakening that reasoning, since the hepatic ducts, though they may, and frequently do, enter the intestine separately from the cystic, yet in such cases always communicate by branches with the gall-bladder itself, a parallel to which will not be pretended to exist in the other case.

We hinted above our opinion of the doubtful authority of Gall and Spurzheim; in proof of this, we shall borrow the notice of two mistakes respecting important organs, from Dr Warren's late work on the Sensorial and Nervous Systems. These authors say, that the organ of courage resides in the

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space behind and between the ears, and that 'courageous animals have the head between and behind the ears large.' This is probably founded on a hasty examination of powerful animals, such as the lion, whose head in this part is really broad, on account of the large muscles which cover it. When these are stript off, the skull is seen to be narrower than that of various monkeys. And the organ of amativeness is in no way remarkable in the baboon, the most extraordinary of all animals for this propensity. Lastly, when Dr Spurzheim, at his lectures in Edinburgh, was several times publicly defied, by the late learned Dr Gordon, to demonstrate some pretended discoveries respecting the course and origin of the nerves, he was unable to return any satisfactory reply.

Our limits will only permit us to remark upon two more passages in this work. We have known many good and pious people, who are sceptical in regard to the expediency of sending missionaries to the Hindoos; but the objection brought against this practice by our author, will probably be as surprising to them, as we acknowledge it was to us.

'The retreating forehead and the depressed vertex of the dark varieties of man make me strongly doubt, whether they are susceptible of these high destinies; whether they are capable of fathoming the depths of science; of understanding and appreciating the mysteries of our religion.' p. 433.

The following is among other reasons in support of the opinion that the ancient Egyptians belonged to the Caucasian variety.

'Can we deem it possible that Homer, Lycurgus, Solon, Pythagoras, and Plato, should have resorted to Egypt to study the sciences, religion, and laws, discovered and framed by men with black skin, woolly hair, and slanting forehead?' p. 294.

In concluding our remarks upon these lectures, we cannot help observing, that, besides those advantages of a divine revelation which are common to all christians, two classes of philosophers, we speak with reverence, have some peculiar ones; since the materialists find in the sacred scriptures the only evidence of the existence of their souls, and the Malebranchists of their bodies.

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ART. III.—*M. Tullii Ciceronis de Re Publica quæ supersunt, edente Angelo Maio, Vaticanæ Bibliothecæ præfecto. Impressum Romæ; denuo impressum Londini.* 1 tom. 8vo. Impensis J. Mawman. 1823.

La République de Cicéron, d'après le texte inédit, récemment découvert et commenté par Mons. Mai, Bibliothécaire du Vatican: avec une traduction Française, un discours préliminaire, et des dissertations historiques par M. Villemain, de l'Académie Française. 2 vol. 8vo. Paris. Michaud. 1823.

WE could hardly have anticipated, at the commencement of our critical labors, that we should have in the course of them the satisfaction of announcing to our readers a work, before unpublished, by the great Roman Orator. Without shrinking at any time from a fearless and impartial performance of our functions, we cannot but experience, in attempting to discharge them on this occasion, something like the diffidence that would naturally be felt by a magistrate of ordinary powers, when required to sit in judgment upon the most distinguished individual in the country. We shall strive as usual to render substantial justice without fear, affection, or hope of reward; but, in consideration of the eminent dignity of the author we are now called to notice, we shall venture to relax a little from the tone of rigid but wholesome severity which we commonly find it necessary to assume; and shall make no scruple to welcome the 'man of Arpinum,'* at his reappearance before the literary tribunal after a silence of three or four hundred years, with something of the favorable prejudice and eager enthusiasm, which, as regular reviewers, we reserve in general for the popular novelist and poet of the day.

The renowned discovery of the long lost and much lamented treatise of Cicero on Government has excited, for a year or two past, a strong sensation in the literary world; and the publication of it was expected with no small degree of impatience. The work had been placed by the unanimous consent of all antiquity at the head of the productions of its illustrious author, as well on account of the importance of the

* Arpinas ignobilis.—*Juvenal.*

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subject, as of the ability and eloquence with which it was treated. It is known that Cicero himself considered it as the best of all his writings; and he frequently alluded to it in his letters and other works with marked complacency. The singularity of the mode in which this interesting relic of former ages was discovered and brought to light, after lying *perdu* several centuries under St Austin's Commentary on the Psalms, added something to the curiosity which was felt respecting it. Finally, the political events of the last and present ages, and the popularity which has been given by them to all inquiries into the principles of government, rendered the present epoch particularly favorable for the first appearance of a celebrated work upon this subject by an ancient author. It is true that we were not wholly ignorant before of the general ideas entertained by the Greeks and Romans on the leading points of political science. Several of their best historical and political works have always been in the hands of the public. Nevertheless, it was impossible not to look with a high degree of curiosity for a treatise by one of the greatest philosophers and statesmen of all antiquity upon those momentous questions, which, for the last half-century, have engaged so deeply the attention of reflecting minds, and have, in their practical discussion, convulsed the civilized world to its centre. Some persons, perhaps, may have fancied, or hoped, that the authority of this great teacher, coming, as it were, like a ghost from the grave, would serve to settle all disputed points, and appease the popular commotions of the present day, as we are told in a passage of Virgil, generally supposed to allude to his famous contemporary, that the orator was accustomed, in his life time, to quiet, by his venerable presence and charming eloquence, the tumults of the Roman forum. On this head, however, we have not, for ourselves, been very sanguine. We have scripture authority for the belief, that, if men will not hear reason from their friends and contemporaries, they would not be convinced, although one should rise from the dead.

The high expectations entertained of the work upon all these grounds have been, as is usual in similar cases, partly disappointed, and partly gratified. The treatise is in fact much less complete than we had been led to suppose, from the manner in which it was announced. In the notices of it,

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that appeared from time to time in the newspapers, it was spoken of as in substance the entire treatise, although disfigured by some breaks and blemishes. It appears, however, at present, that the discovered fragment is only about a fourth part of the whole essay; and, including all the passages preserved in other authors in the form of citations, which have been diligently collected and arranged by the present editor, we have in the whole but about a third. It is known that the treatise consisted of six books. Of these the first and second only are in any degree complete, and even in them there are large defects. Of the third, fourth, and fifth, there are only a few scanty fragments; and of the sixth, nothing. A long and very remarkable passage of the sixth book, commonly entitled *the Dream of Scipio*, is, however, extant in Macrobius; and forms of itself one of the most curious and interesting relics of ancient literature. It is intended, as is well known to the classical reader, to establish, under the form of a poetical fiction, the sublime dogma of the immortality of the soul. It was probably introduced at the conclusion of the work for the purpose of adding the hopes and fears of future retribution to the other motives to virtue. But, although the preservation of this and some other extracts makes up in a degree the deficiencies of the newly discovered fragment, the public have been somewhat disappointed to find that they still possess in the whole only a third part of the promised and expected treasure. On the other hand, the fragments, that are really presented to us, are fitted by their merit to satisfy and even surpass the highest expectations that could possibly have been formed of them. They display, throughout, the rich and glowing magnificence of style always under the control of a perfect taste, that forms the manner of their author in the best of his other writings; and they contain some passages equal to any thing he ever wrote. These beautiful fragments, while they justify the high commendations bestowed by the ancients upon the entire treatise, and thus increase our regret for its loss, afford nevertheless a rich feast to the lover of eloquence. It may be added, that, as the works of Cicero are more valuable for the generous feelings and high poetical enthusiasm which constantly inspire them, than for the originality or scientific precision of the matter, they are less injured than many others would be by being read in a muti-

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lated form. The exposition of a new scientific theory is generally unintelligible unless complete, and a fragment of a work devoted to this object would be in a manner worthless. But the writings of Cicero are not of this description. It was his habit to draw his theories in general either from the common fund of familiar truths or from the works of the most distinguished preceding philosophers. Thus the current of his thoughts on a particular subject may be divined by reference to the principles of human nature, or to the state of opinion or learning at the time when he wrote. Every separate fragment is a chapter in the great book of universal experience commented upon by this illustrious observer. The value of the commentary lies in the power and charm of the style. It is like a fine poem of which we know the fable; and we read any detached passage with nearly the same interest and pleasure whether we possess the whole or not.

The new-found fragment of the Republic was first printed at Rome under the care of the discoverer, Mr Mai, the keeper of the Vatican library; and the text was accompanied by a dedication to His Holiness the Pope, a long preface, and a few grammatical notes by the editor. The work has been reprinted at London from this edition without alteration. As fast as the sheets were struck off at Rome they were sent to Paris; where the text has since been published with a French translation on the opposite pages, a new preliminary discourse, additional notes, and several long dissertations. The preface and notes of the Roman editor are also preserved in this edition. The new matter is by M. Villemain, one of the most distinguished scholars and academical orators in France. In the following notice of this interesting publication, we shall offer, in the first place, a concise statement, extracted from the preface of M. Mai, of the principal facts that are known respecting the composition and loss of the treatise and its late discovery. We shall then add a few remarks upon the literary and scientific merit of the work; and conclude with a notice of the additional matter supplied by the French editor.

1. The treatise on Government was begun by Cicero during a short summer retreat from the business of the forum, which he passed at his residence near Cumæ, in the seven hundredth year of the city, the fifty-fourth of his age, and the tenth after his consulship. This is known by a passage in a

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letter to his brother Quintus. 'I amuse myself pretty well,' he observes, 'in the country, excepting that I feel very sensibly the want of your society; and I shall stay till June. I have been occupied in writing the treatise on Government of which I spoke to you. It is a work of some extent and labor; but, if I succeed in it to my mind, I shall think the time employed upon it very well spent. If not, I shall throw it into the sea that is now rolling before my eyes as I write.' It is not certain at what time the work was completed. Mr Mai seems to think that it was struck off at a single heat; but this supposition is expressly contradicted by a remark of the author in another letter to his brother. 'As to the work that I began at Cumæ, and which you inquire about, I am still employed upon it, but have changed the whole plan several times.' This passage makes it certain that he had left Cumæ before the work was completed. In fact, the treatise is too considerable to have been meditated and written during a single visit to the country, which, as Cicero was then in full practice at the bar, could not well have lasted more than a few weeks. In a letter written the same year he tells his correspondent that he does not pass a day without arguing some cause. The circumstance that the plan was several times changed, proves of itself that the work was a good while in preparation. The author complains, in other letters, of want of leisure to finish it. 'I heartily wish,' he writes to Atticus, 'that I may be able to complete the work that I have undertaken. The subject, as you well know, is a very important one. To do it full justice would require much leisure, a thing of which I am greatly in want.' It is known, however, in general, that Cicero wrote with great facility and despatch. The work upon its appearance was received by the public with general approbation. 'Your books on Government,' says a correspondent, writing to him, 'are universally approved.' *Tui politici libri omnibus vigent.* His friend Atticus, we are told by the gratified author, devoured them; as he had previously extolled to the skies the essay on oratory. The writer himself shared the common enthusiasm; and often alludes to this treatise with evident complacency. It has been remarked, however, with justice, that the encomiums bestowed by Cicero himself upon his own writings and speeches are much less open and direct than those which he continually

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lavishes upon his actions and character. The difference perhaps arose from an instinctive feeling that philosophy and eloquence were his strong points, and conduct his weak one. He seems to be conscious, that he stands unrivalled in Rome as a writer, and an orator; and, without laboring these points, he makes it his constant effort to persuade himself and others that he is also the greatest statesman and magistrate that his country has ever produced. Among other examples of this kind may be mentioned a passage in a letter to Atticus, in which he describes himself, without much ceremony, as realizing, with some slight exceptions, the character of the perfect citizen, exhibited in one of the books of this treatise. The letter was written from his government of Cilicia, at a time when he was negotiating at Rome to obtain the honor of a triumph upon his return. He affects to treat the desire to obtain this distinction as a slight weakness, but as the only one in his character. 'Were it not,' he observes, 'for this idea of the triumph, that has been suggested to me, and which, however, you approve, I do not know that you would need to look much farther for the perfect citizen described in the sixth book.'

The treatise on Government continued to enjoy the highest reputation as long as learning was cultivated in Rome or its provinces. It was particularly admired and frequently quoted by the most eminent of the christian fathers, especially Lactantius and Austin. The sublime passage upon the characteristics of natural law, preserved in the writings of the former, is familiar to all; and the latter is supposed to have taken from this treatise the hint of the most celebrated of his own works, entitled *the City of God*. It is justly remarked by the French editor that the soul of learning had transmigrated at this time into the body of the new religion. The christian fathers, without being precisely philosophers, were the boldest thinkers, and best writers of the time. We find them fearlessly criticising the substance of this and the other valuable treatises of the classical authors; approving what they considered good, and condemning the rest without scruple, while the pagan writers of the same period only dwelt with a barren and indiscriminating admiration upon the structure of the language. The church had not yet sunk into the gross ignorance, that disgraced it at a later period. Austin would not have converted a

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splendid copy of the Republic into blank parchment with a view of making it a receptacle for his own Commentary on the Psalms; but the worthy father would doubtless have been greatly delighted, if he could have anticipated that his Commentary would serve as a sort of shield to protect this solitary copy of the work he valued so much from the rage of the barbarians, and preserve it, at least in part, for better times.

In the general wreck of learning, which attended the fall of the Roman empire, the treatise on Government disappeared; and thus shared the fate of the institutions it was principally destined to celebrate. One or two scattered copies survived a while; and a few scanty notices of it are to be found in some subsequent authors. One of the last persons, who make any precise mention of it, is the celebrated Herbert, afterwards Pope Sylvester II, the most distinguished scholar of the tenth century. It is not quite certain that even he had read it; as the passage in question is an order to a monk, to whom he is writing, to procure this treatise at Rome and bring it to him. The presumption seems to be, however, that the work was then considered as extant. John of Salisbury, who flourished in the twelfth century, quotes it; but as the same passage is also quoted by Austin, there is no certainty that John did not receive it at second hand. This vestige, uncertain as it is, is the last that remains of the existence of the Republic. Two centuries later, when the love of learning had already begun to revive in Italy, unwearied researches were made by Petrarch after the work, but to no purpose; and he finally gave up the point in despair. The smallness of the number of copies of the classical writings, that had survived the desolating period of the dark ages, is remarkably illustrated by the fact, that two valuable works, to wit, the treatise of Cicero on Glory, and that of Varro on Divine and Human Affairs, which Petrarch himself had at one time in his possession, have nevertheless perished. The copies he read were perhaps the only ones that remained; and these, it seems, were destroyed by some accident. The learned librarian of the Vatican remarks upon this occasion, with an enthusiasm better suited to his literary than to his ecclesiastical calling, that 'the man who should now recover these works, which were read by Petrarch only five hundred years ago, might well sacrifice a hecatomb to fortune.' The researches made by

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Poggio in the time of Leo X, as well as well those of later date, were equally fruitless. Vague rumors of the existence of the work were occasionally circulated, as in a letter to Roger Ascham, the tutor of queen Elizabeth, from a correspondent at Strasburgh, who tells him that he had been promised a copy of the Republic by a person dwelling in that neighborhood; but that he had sent for it repeatedly without being able to get it. The following passage in an epistle of Caspar Barth, a German scholar of the seventeenth century, leaves room to suppose that the work was extant in that country till a very recent period. 'I now remember,' he observes, 'to have heard a fact related by John Henry Meiboom, a very credible and worthy man, which would prove, if true, that the treatise on the Republic existed very recently in Germany. He told me that there was formerly in the monastery of Rittershaus, near Brunswick, a considerable library; and that the titles of the books still remain pasted over the pigeon-holes where they were deposited. One of these titles is that of Cicero's treatise on the Republic. The library was destroyed during the thirty years' war, and some miserable soldier has deprived the world of a literary treasure that the lapse of ages will probably never restore.'

Upon the whole, the learned had lost all hope of ever recovering this treatise, when the sagacity of the present race of scholars opened the new mine of the *codices rescripti* or twice-written manuscripts. Parchment was formerly the principal material employed in writing; and, as it was naturally much more scarce and dear than paper is at present, it was not unusual, even in the time of Cicero, to save the expense of a new sheet by employing a second time one that had been written upon before, after first effacing the former inscription. In general the writings thus effaced were probably of little value; and it is not likely that any serious loss was sustained by this method until the decline of learning. But it is fearful to think what ravages it must have made among the few remaining copies of the ancient classics, at a time, when, in the opinion of all competent judges of literary merit, a single homily of any barbarous saint or bishop was well worth the profane rubbish of a dozen whole Menanders. Fortunately, the writing thus effaced, may in many instances be read by a very careful inspection and the use of chemical agents to re-

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vive the faded color of the ink; and there is certainly room to entertain sanguine hopes of recovering in this way some of the valuable works that were thought to be lost forever. We have already had occasion to lay before the public some account of the discoveries made upon this principle by M. Mai in the Ambrosian library at Milan. The reputation, which he obtained in consequence, procured him the more distinguished station which he now occupies; and the recovery of a part of the Republic was one of the first fruits of his researches in the Vatican. It can hardly be thought unreasonable to anticipate much future success from so auspicious a commencement. The manuscript containing this fragment must have been a very splendid one, and is considered by M. Mai as of the highest antiquity, perhaps of the second or third century. We need not follow the learned editor in his very minute description of it, having already stated in general what part of the work has been recovered. It may be remarked that, if the copy had been somewhat less elegant, and the characters of a common size, the manuscript would easily have contained the whole treatise, within the same compass which is now occupied by less than a third part of it. We omit, for want of room, a great variety of curious details, contained in the editor's preface, in regard to his immediate subject, as well as some others that are touched upon incidentally; and proceed, without farther delay, to offer a few hasty observations upon the literary and scientific merit of this celebrated treatise, as far as we can judge of it from the recovered fragment.

2. The treatise on government was written in the dialogue form; and it is stated by M. Mai that it was commonly cited by the christian fathers under the name of *the Dialogues*, although the same manner is adopted in most of the other philosophical works; a remarkable proof of the high estimation in which it was held. The principal interlocutors are Scipio Africanus and Laelius. Several other persons are also present and occasionally speak. The author intended at one time to appear himself as the principal speaker, and had been advised to do it by his friends; but finally determined to lay his scene at a period somewhat distant from the time when he wrote, and thus escape the necessity of alluding to the unhappy dissensions that had recently distracted his country. In choosing his principal speakers Cicero was extremely judicious and

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happy. It was necessary that the persons selected should have been distinguished both as statesmen and as scholars; in order that a philosophical discussion might appear consistent with their known characters; and that a high political reputation might give authority to their remarks on government. Scipio and Laelius united both these requisites in a remarkable degree. They were among the earliest of the Romans who added the graces of Grecian taste and learning to the manly virtues of their own ruder country. These accomplishments had refined and polished their characters, without detracting at all from their force and purity. The very name of the Scipios, the *duo fulmina belli*, was the symbol of military talent, patriotism, magnanimity, and every private virtue. Laelius was somewhat less distinguished in active life; but enjoyed on the other hand a still higher reputation for contemplative wisdom, and was commonly styled the *Sage*. 'Such,' says Cicero very beautifully in the introduction to the treatise before us, 'was the common law of friendship between these excellent men, that when they were in actual service, Laelius adored Africanus as a god, on account of his transcendant military talents; and that Scipio, when they were at home, revered his friend, who was older than himself, as a father.' The two friends were not less remarkable for their taste and love of letters, than for other shining qualities. It is well known that they extended to the poet Terence—an African slave—the honor of their protection and intimacy; and it was the common report at Rome that they assisted this pure and sweet writer in the composition of his comedies. The poet alludes to this report himself in the prologue to the *Brothers*, and takes great pride in it, although he speaks of it as probably circulated for the purpose of injuring him.* The uncommon

* Nam, quod isti dicunt malevoli, homines nobiles
Eum adjutare, assidueque unà scribere;
Quod illi maledictum vehemens esse existumant,
Eam laudem hic dueit maxumam, cum illis placet,
Qui vobis universis et populo placent;
Quorum operâ in bello, in otio, in negotio,
Suo quisque tempore usu' est sine superbiâ.
Adelph. in prologo.

It is known, from several passages in the classical writers, that Scipio and Laelius were the persons alluded to in this prologue. Suetonius quotes a speech of a cer-

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and lasting attachment of Scipio and Laelius to each other throws an additional grace over the virtues of both; and their real history affords a finer model of friendship, than any of the fabulous examples imagined by the poets. The kindred soul of Cicero—whose friendship for Atticus is another beautiful instance of a similar kind—appears to have been deeply struck with this charming assemblage of all the noblest and loveliest qualities of our nature. He alludes frequently to Scipio and Laelius in all his writings; and has introduced them as the principal speakers in the Dialogue on Friendship, as well as in the one before us.

The dialogue on Government is represented as having occupied three days; and was distributed into six books. Every second book began with a prologue, in which the author spoke in his own person. In the prologue to the first, the beginning of which is unfortunately lost, Cicero considers the question, how far it is the duty of a wise and virtuous man to engage in political affairs. He compares, at considerable length, the happiness and utility of contemplative and active life, and decides in favor of the latter. The author is here evidently pleading his own cause; and he does it indeed with a direct reference to the events of his own life. He next introduces his fable, by supposing himself to have heard in his youth from

tain Mummius, in which it was expressly stated that Scipio Africanus wrote the comedies which were brought out in the name of Terence. Cornelius Nepos mentions that Laelius was one day writing in his cabinet about the hour of supper, and kept his family waiting for him a considerable time. Upon coming out of his study he told them that he had never found himself in a better vein for composition; and then repeated some verses which are now to be found in the *Self-Tormentor* of Terence. Suetonius has preserved, in his life of Terence, the following curious epigram, which seems to show, that the friendship and patronage of these great men did not improve the worldly fortune of the ingenious African so much as might have been expected.

> Dum lasciviam nobilium, et fucosas laudes petit;
> Dum Africani vocem divinam inhiat avidis auribus;
> Dum ad Furium se cœnitare et Lælium, pulchrum putat;
> Dum se amari ab hisce credit, crebro in Albanum rapi
> Ob florem ætatis suæ, ad summam inopiam redactus est.
> Itaque e conspectu omnium abiit in Græciam in terram ultimam.
> Mortuus est in Stymphalo, Arcadiæ oppido: nil Publius
> Scipio profuit, nihil ei Lælius, nil Furius,
> Tres per idem tempus qui agitabant nobiles facillime.
> Eorum ille operâ ne domum quidem habuit conductitiam,
> Saltem ut esset, quo referret obitum domini servulus.

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Rutilius, a distinguished philosopher and a friend of Scipio, an account of a conversation on the principles of government, that was held in the gardens of Scipio by several Romans of the highest rank; and proceeds to relate the particulars of it, for the information of the friend to whom the dialogue was addressed, and whose name is lost. The groundwork being thus prepared, the dialogue commences between the principal speakers, who are passing the Latin holidays at Scipio's villa. After some preliminary discourse on the comparative importance of natural and moral philosophy, Scipio enters upon the main subject, and explains the origin of society and the value of the several modes of government. He states the respective advantages and disadvantages of the three simple forms; and prefers to either of them a system combining in some degree the distinguishing characteristics of all. This discussion occupies the remainder of the first book, which is nearly entire. The Roman Republic, being the principal example, then known, of the mixed form of government preferred by Scipio, he is naturally led to enter upon an analysis of the institutions of his own country; which occupies the greater part of the second book, and is little more than a very concise abstract of the known early history of Rome. Toward the close of the book, which is however mutilated and imperfect in this part, the conversation appears to have returned to the question of the comparative value of the different forms of government. It seems to have been maintained by Scipio that each was good in itself, but liable by abuse to degenerate into a corresponding form of tyranny; as monarchy into despotism, aristocracy into oligarchy, and democracy into anarchy. It was thus taken for granted that a just and upright administration of the government is more advantageous to a nation, than an unjust one; or, in other words, that the leading principles of politics and morals are the same. But, as this supposition may itself be called in question, the dialogue proceeds to a discussion of it; and one of the speakers is invited by Scipio and Laelius to plead the cause of injustice, although in opposition to his own opinion. This being done, the better side of the question is afterwards argued by Laelius; and it is in this part of the dialogue, that the famous passage on natural law, preserved in Lactantius, and so often cited by modern authors, was introduced. The discussion of this point appears to have

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occupied almost the whole of the third book, of which unfortunately only a short fragment remains. Of the fourth and fifth, the fragments, as we have already observed, are still more scanty; and of the sixth there is nothing in the manuscript of M. Mai. As far as the contents of the fourth can be conjectured from the few passages, that are cited by former authors or have now been brought to light, the subject appears to have been a continuation, in reference to private morals, of the discussion of the value of good principles, which had been treated in the third in reference to public conduct. Of the fifth, we only know, from a passage in St Austin's *City of God*, that it began with a prologue, in which the author lamented, in his own person, the degenerate state of the political institutions of his country. The state of Rome in the time of Cicero could of course have no immediate connexion with the conversations of Laelius and Scipio. M. Villemain supposes, not without some degree of probability, that this subject was touched upon in the prologue by way of contrast; and that the main design of the book was to represent the situation of the republic at its most brilliant epoch, during which the scene of the dialogue is laid; when the manners of the people were uncorrupted and the institutions still in perfection. Of the sixth book, we only know that it contained a description of the ideal character of the perfect citizen; and that it concluded with the noble passage familiarly known as *the Dream of Scipio*. Such, as far as they are now ascertained, or can be conjectured, appear to have been the general plan and disposition of the work. It is easy to perceive that there could have been very little attempt in it at strict method or scientific precision; and that the merit was principally in the elevated tone of thought and feeling that pervades the whole discussion, and in the force and beauty of the style. We take for granted, that the work will be speedily reprinted in this country. In the mean time, we trust that we shall perform an agreeable service to the classical reader by offering him one or two extracts, in the way of specimen. They will of course rather excite than satisfy his curiosity; and will thus do no injury to the speculation of the future publisher. The prologue to the first book appears to be well adapted to this purpose, as it contains of itself a complete argument on the comparative utility and happiness of political and philosophical pursuits.

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A part of the first section being lost, and the remainder not offering an entire train of thought, we begin our extract at the second section. We make no apology for quoting the original. The richness and majesty of the Latin language, as managed by Cicero, are quite unattainable in any of our modern dialects.

Nec uero habere uirtutem satis est, quasi artem aliquam, nisi utare. Etsi ars quidem, cum ea non utare, scientia tamen ipsa teneri potest; uirtus in usu sui tota posita est; usus autem eius est maximus ciuitatis gubernatio, et earum ipsarum rerum, quas isti in angulis personant, reapse, non oratione, perfectio. Nihil enim dicitur a philosophis, quod quidem recte honesteque dicatur, quod non ab his partum confirmatumque sit, a quibus ciuitatibus iura descripta sunt. Unde enim pietas? aut a quibus religio? unde ius aut gentium, aut hoc ipsum ciuile, quod dicitur? unde iustitia, fides, aequitas? unde pudor, continentia, fuga turpidinis, adpetentia laudis et honestatis? unde in laboribus et periculis fortitudo? Nempe ab his, qui haec disciplinis informata, alia moribus confirmarunt, sanxerunt autem alia legibus. Quin etiam Xenocraten ferunt, nobilem in primis philosophum, cum quaereretur ex eo, quid adsequerentur eius discipuli, respondisse, ut id sua sponte facerent, quod cogerentur facere legibus. Ergo ille ciuis qui id cogit omnis imperio legumque poena, quod uix paucis persuadere oratione philosophi possunt, etiam his, qui illa disputant, ipsis est praeferendus doctoribus. Quae etenim istorum oratio tam exquisita, quae sit anteponenda bene constitutae ciuitati, publico iuri, et moribus? Equidem quemadmodum urbes magnas atque inperiosas, ut appellat Ennius, uiculis et castellis praeferendas puto, sic eos qui his urbibus consilio atque auctoritate praesunt, his qui omnis „negotii publici expertes„ sint, longe duco sapientia ipsa esse anteponendos. Et quoniam maxime rapimur ad opes augendas generis humani, studemus-

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que nostris consiliis et laboribus tutiorem et opulentiorem uitam hominum reddere, et ad hanc uoluptatem ipsius naturae stimulis incitamur; teneamus eum cursum, qui semper fuit optimi cuiusque; neque ea signa audiamus, quae receptui canunt, ut eos etiam reuocent, qui iam processerint.

His rationibus tam certis tamque inlustribus opponuntur ab his, qui contra disputant, primum labores qui sint re publica defendenda sustinendi: leue sane inpedimentum uigilanti et industrio; neque solum in tantis rebus, set etiam in mediocribus uel studiis uel officiis vel vero etiam negotiis contemnendum. Adiunguntur pericula uitae, turpisque ab his formido mortis fortibus uiris opponitur: quibus magis id miserum uideri solet, natura se consumi et senectute, quam sibi dari tempus, ut possint eam uitam, quae tamen esset reddenda naturae, pro patria potissimum reddere. Illo uero se loco copiosos et disertos putant, cum calamitates clarissimorum uirorum, iniuriasque iis ab ingratis inpositas ciuibus colligunt. Hinc enim illa et apud Graecos exempla, Miltiadem uictorem domitoremque Persarum, nondum sanatis uolneribus iis, quae corpore aduerso in clarissima uictoria accepisset, uitam ex hostium telis seruatam, in ciuium uinclis profudisse: et Themistoclem patria, quam liberauisset, pulsum atque proterritum, non in Graeciae portus per se seruatos, sed in barbariae sinus confugisse, quam adflixerat. Nec uero leuitatis Atheniensium crudelitatisque in amplissimos ciuis exempla deficiunt: quae nata et frequentata apud illos, etiam in grauissimam ciuitatem nostram dicuntur redundasse. Nam uel exilium Camilli, uel offensio commemoratur Ahalae, uel inuidia Nasicae, uel expulsio Laenatis, uel Opimi damnatio, uel fuga Metelli, uel acerbissima ·C· Mari clades, principum caedes, uel eorum multorum pestes, quae paulo post secutae sunt. „Nec vero iam meo nomine abstinent.„ Et credo quia nostro consilio ac periculo sese in illa uita atque otio

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conseruatos putant, grauius etiam de nobis queruntur et amantius. Sed haud facile dixerim cur cum ipsi discendi aut uisendi causa maria tramittant * * * * * * saluam esse, consulatu abiens, in contione ·P·R· idem iurante iuravissem, facile iniuriarum omnium compensarem curam et molestiam. Quamquam nostri casus plus honoris habuerunt quam laboris; neque tantum molestiae, quantum gloriae; maioremque laetitiam ex desiderio bonorum percepimus, quam ex laetitia improborum dolorem. Sed si aliter, ut dixi, accidisset, qui possem queri? cum mihi nihil inprouiso, nec grauius quam expectauissem pro tantis meis factis euenisset? Is enim fueram, cui cum liceret aut maiores ex otio fructus capere, quam ceteris, propter uariam suauitatem studiorum, in quibus a pueritia uixeram; aut siquid accideret acerbius uniuersis, non praecipuam sed parem cum ceteris fortunae condicionem subire; non dubitauerim me grauissimis tempestatibus ac paene fluminibus ipsis obuium ferre, conseruandorum ciuium causa, meisque propriis periculis parere commune reliquis otium. Neque enim hac nos patria lege genuit aut educauit; ut nulla quasi alimenta expectaret a nobis, ac tantummodo nostris ipsa commodis seruiens, tutum perfugium otio nostro suppeditaret, et tranquillam ad quietem locum; sed ut plurimas et maximas nostri animi, ingenii, consilii partis ipsa sibi ad utilitatem suam pigneraretur; tantumque nobis in nostrum priuatum usum, quantum ipsi superesse posset, remiteret.

Iam illa perfugia, quae sumunt sibi ad excusationem, quo facilius otio perfruantur, certe minime sunt audienda; cum ita dicunt, accedere ad rem publicam plerumque homines nulla re bona dignos, cum quibus comparari sordidum, confligere autem, multitudine praesertim incitata, miserum et periculosum sit. Quam ob rem neque sapientis esse accipere habenas, cum insanos atque indomitos impetus uolgi cohibere non

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possit, neque liberalis, cum impuris atque inmanibus aduersariis decertantem, uel contumeliarum uerbera subire, uel expectare sapienti non ferendas iniurias: proinde quasi bonis et fortibus et magno animo praeditis ulla sit ad rem publicam adeundi causa iustior, quam ne pareant improbis, neue ab isdem lacerari rem publicam patiantur, cum ipsi auxilium ferre si cupiant, non queant.

Illa autem exceptio cui probari tandem potest, quod negant, sapientem suscepturum ullam rei publicae partem, extra quam si eum tempus et necessitas coegerit? quasi uero maior cuiquam necessitas accidere possit, quam accidit nobis; in qua quid facere potuissem, nisi tum consul fuissem? consul autem esse qui potui, nisi eum uitae cursum tenuissem a pueritia, per quem equestri loco natus peruenirem ad honorem amplissimum? Non igitur potestas est ex tempore, aut cum uelis, opitulandi rei publicae, quamuis ea prematur periculis, nisi eo loco sis, ut tibi id facere liceat. Maximeque hoc in hominum doctorum oratione mihi mirum uideri solet, quod qui tranquillo mari gubernare se negent posse, quod nec didicerint nec umquam scire curauerint, eidem ad gubernacula se accessuros profiteantur excitatis maximis fluctibus. Isti enim palam dicere, atque in eo multam etiam gloriari solent, se de rationibus rerum publicarum aut constituendarum aut tuendarum, nihil nec didicisse umquam nec docere; earumque rerum scientiam non doctis hominibus ac sapientibus, sed in illo genere exercitatis concedendam putant. Quare qui conuenit polliceri operam suam rei publicae tum denique, si necessitate cogantur? cum, quod est multo procliuius, nulla necessitate premente rem publicam regere nesciant. Equidem, ut uerum esset sua uoluntate sapientem descendere ad rationes ciuitatis non solere; sin autem temporibus cogeretur, tum it munus denique non recusare; tamen arbitrarer hanc rerum

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ciuilium minime neglegendam scientiam sapienti, propterea quod omnia essent ei praeparanda, quibus nesciret an aliquando uti necesse esset.

Haec plurimis a me uerbis dicta sunt ob eam causam, quod his libris erat instituta et suscepta mihi de re publica disputatio; quae ne frustra haberetur, dubitationem ad rem publicam adeundi in primis debui tollere. Ac tamen siqui sunt, qui philosophorum auctoritate moueantur, dent operam parumper adque audiant eos, quorum summa est auctoritas aput doctissimos homines et gloria: quos ego existimo, etiam si qui ipsi rem publicam non gesserint, tamen quoniam de re publica multa quaesierint et scripserint, functos esse aliquo rei publicae munere. Eos uero septem, quos Graeci sapientis nominauerunt, omnis paene uideo in media re publica esse uersatos. Neque enim est ulla res, in qua propius ad deorum numen uirtus accedat humana, quam ciuitatis aut condere nouas aut conseruare iam conditas.

Quibus de rebus, quoniam nobis contigit, ut idem et in gerenda re publica aliquid essemus memoria dignum consecuti et in explicandis rationibus rerum ciuilium quandam facultatem non modo usu sed etiam studio discendi et docendi essemus auctores; cum superiores ali fuissent in disputationibus perpoliti, quorum res gestae nulla inuenirentur; ali in gerendo probabiles, in disserendo rudes: nec uero nostra quaedam est instituenda noua et a nobis inuenta ratio, sed unius aetatis clarissimorum ac sapientissimorum nostrae ciuitatis uirorum disputatio repetenda memoria est, quae mihi tibique quondam adulescentulo est a ·P· Rutilio Rufo, Zmyrnae cum simul essemus, compluris dies exposita, in qua nihil fere quod magno opere ad rationes omnium rerum pertineret praetermissum puto.

After the characters are introduced, the conversation turns at first upon the comparative importance of natural and moral science; by the former of which seems to be chiefly intended

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the contemplation and study of the general system of the universe. Scipio extols, at considerable length, the interest and value of these pursuits; and, in the course of his remarks, introduces the following passage, which we think not inferior either in sublimity of thought or splendor of language to the very best pages of its author.

Quid porro aut praeclarum putet in rebus humanis, qui haec deorum regna perspexerit? aut diuturnum, qui cognouerit quid sit aeternum? aut gloriosum qui uiderit quam parua sit terra, primum uniuersa, deinde ea pars eius quam homines incolant; quamque nos in exigua eius parte adfixi, plurimis ignotissimi gentibus, speremus tamen nostrum nomen uolitare et uagari latissime? Agros uero et aedificia et pecudes et inmensum argenti pondus adque auri qui bona nec putare nec appellare soleat, quod earum rerum uideatur ei leuis fructus, exiguus usus, incertus dominatus, saepe etiam teterrimorum hominum inmensa possessio? Quam est hic fortunatus putandus, cui soli uere liceat omnia non Quiritium set sapientium iure pro suis uindicare! nec ciuili nexo, sed communi lege naturae, quae uetat ullam rem esse cuiusquam nisi eius qui tractare et uti sciat: qui inperia consulatusque nostros in necessariis non in expetendis rebus, muneris fungendi gratia subeundos, non praemiorum aut gloriae causa adpetendos putet; qui denique ut Africanum auum meum scribit Cato solitum esse dicere, possit idem de se praedicare, numquam se plus agere, quam nihil cum ageret; numquam minus solum esse, quam cum solus esset. Quis enim putare uere potest plus egisse Dionysium tum cum omnia moliendo eripuerit ciuibus suis libertatem, quam eius ciuem Archimedem cum istam ipsam sphaeram, nihil cum agere uideretur, de qua modo dicebatur, effecerit? Quis autem non magis solos esse qui in foro turbaque quicum conloqui libeat non habeant, quam qui nullo arbitro uel secum ipsi loquantur, uel quasi doctissimorum hominum in concilio atsint, cum eorum inuentis scribtisque se

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oblectent? Quis uero diuitiorem quemquam putet, quam eum cui nihil desit, quod quidem natura desideret? aut potentiorem quam illum, qui omnia quae expetat, consequatur? aut beatiorem quam qui sit omni perturbatione animi liberatus? aut firmiore fortuna, quam qui ea possideat, quae secum, ut aiunt, uel e naufragio possit ecferre. Quod autem imperium, qui magistratus, quod regnum potest esse praestantius, quam despicientem omnia humana, et inferiora sapientia ducentem, nihil umquam nisi sempiternum et diuinum animo uolutare? cui persuasum sit, appellari ceteros homines, esse solos eos qui essent politi propris humanitatis artibus? Ut mihi Platonis illut, seu quis dixit alius, perelegans esse uideatur; quem cum ex alto ignotas ad terras tempestas et in desertum litus detulisset, timentibus ceteris propter ignorationem locorum, animaduertisse dicunt in arena geometricas formas quasdem esse descriptas; quas ut uidisset, exclamauisse ut bono essent animo; uidere enim se hominum uestigia: quae uidelicet ille non ex agri consitura, quam cernebat, ced ex doctrinae indiciis interpretabatur. Quam ob rem, Tubero, semper mihi et doctrina et eruditi homines et tua ista studia placuerunt.

It is difficult at first to recognize the character of a merely human philosophy in these lofty aspirations after a purer and more intellectual state of being; and one is almost tempted to apply to the Roman orator the supposition of the early christian fathers in regard to Plato, that he was divinely endowed by anticipation with the spirit of our religion.

These extracts will convey to the reader a better notion of the literary merit of the dialogue before us, than any critical remarks that we could offer. We shall now proceed to lay before him the few ideas that have occurred to us, in regard to the philosophical or scientific value of the theories contained in it. We have already observed that the author did not probably intend to furnish a complete system of political science; and if he did, the mutilated state of the dialogue would not permit us to judge very accurately of its value.

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In the part that remains, two or three of the most important subjects connected with general politics, are, however, successively touched upon; to wit, the origin of society, the comparative advantages of different forms of government, and the constitution of the roman Republic. We shall briefly notice the opinions maintained in the dialogue upon each of these topics.

On the first point the theory of the author is extremely satisfactory; and the more so, as it wears, at the present day, an appearance of novelty, in consequence of the great temporary popularity that has lately been obtained by a different one. In the work before us, the origin of society is referred to the plain and simple cause of the social instinct, which forms one of the principles of our nature. 'A nation,' says the author, 'is a collection of individuals united by a common law and a common government. The origin of such an union is not the weakness of man in an individual state; but the social instinct of our nature. We are not formed to live separately from each other, and wherever men are found, it is in a state of society.' Such is the beginning of the passage in which the author expressed his ideas upon this subject; and of which the remainder is unfortunately lost by a break in this part of the manuscript. But though we are thus deprived of the development of the theory, we see very clearly in these few words the leading principle. The same doctrine is held by some of the most distinguished modern writers, particularly Grotius. Montesquieu, a still higher authority, lays it down in his precise and pointed way in the Persian letters. 'I never hear any body talk of public law,' he observes, 'without beginning with a painful inquiry into the origin of society. This appears to me to be quite a superfluous labor. If men did not easily enter into social union, if they naturally avoided and hated each other, the inquiry would be more reasonable. But they are all united together by birth. A son is born by the side of his father, and there he stays. This is society, and the origin of society.'

However simple and self-evident this theory may appear, it is well known that some philosophers of considerable reputation, as for example Hobbes, have denied the existence of a social instinct; and maintained that the natural relation

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between individuals is that of hostility. This opinion never obtained much popularity. Another doctrine, somewhat less paradoxical but equally incorrect, received, about the middle of the last century, from the ingenious sophistry and enthusiastic eloquence of Rousseau, a great temporary currency; and is admitted by many even at present. In this theory men in a natural state are not considered as absolutely hostile to each other; but each individual is supposed to be wholly isolated, and disconnected from all the rest. Society is regarded as an artificial institution, formed by a special contract among these individuals, existing previously in their natural state of separation. The obligation to obey the laws and to discharge the other social duties, is made to result from the obligation we are under to perform this engagement, into which we have entered, or our ancestors for us. Such is the famous system of the *social contract*, which attracted so strongly the public attention, when exposed by Rousseau in his celebrated treatise under that title, and has been, perhaps, the one most generally received even since his time. Besides the radical error involved in it of considering society as an artificial state, it fails altogether in establishing the social duties on any tenable ground. I have entered into a contract to obey the laws and promote the general good, and therefore I am bound to do so. But why am I bound to perform a contract? This question is as difficult to answer as the other; and in the work of Rousseau there is no attempt at a solution of it. In fact the system in question precisely reverses in this particular the natural order of cause and effect. Instead of being under an obligation to discharge the social duties because we are bound to perform our contracts, we are under no other moral obligation to perform contracts, than because it is one of our social duties to do so; that is, one of the developments and particular forms of the general law of nature, which commands us to live in society and to promote each other's good. The theory of Rousseau, therefore, even admitting its correctness, furnishes no solution of the problem of society; or rather tends directly to the dissolution of social institutions in all their different forms.

The error of this writer, considerable as it is, was not, however, wholly unnatural. Although the existence of society is determined by an original law of nature, the formal institutions

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necessary for managing the common interests of the members of every particular society, are of course, in a great measure, arbitrary. They must, therefore, be settled by mutual agreement; and can have no binding force any farther than they have obtained the assent, express or implied, of a majority at least of the persons upon whom they operate. These institutions, taken together, make up the constitution or government of a country; and hence every lawful government is founded in reality on a social contract express or implied. The error of Rousseau lies in mistaking the form of society for the substance; and regarding the social union itself as founded in convention, because the special rules which are necessary for transacting the common affairs of such an union can have in justice no other origin.

Of these forms of government, established in different states, no two are precisely similar; but they have generally been distributed by political writers, conformably to certain leading characteristics, under the three principal heads of monarchy, aristocracy, and democracy. This mode of classification was adopted by the ancients; and has been maintained and refined upon by the most intelligent of the moderns. The next subject taken up in the dialogue before us, is the question of the comparative value of these different forms. The reasoning upon this topic is far from being so precise and satisfactory as that upon the former. The leading principles seem to be, that each of the simple forms is good when administered with justice; that each is liable by abuse to degenerate into an analogous form of tyranny or misgovernment; and that a compound form, uniting, in some degree, the characteristics of the three, is preferable to either. Now the fact that the three simple forms are all good when well administered, and all liable to abuse, has no tendency to shew which of them is the best, or that a form compounded of all is better than either. We know that every thing good may be abused. The real questions, which are not touched upon here, would be, which of the three is least liable to abuse, and produces the best effects when well administered; and whether a compound form produces better effects and is less liable to abuse, than the simple ones. In regard to this latter point, it seems to be taken for granted by Cicero, that, because the three forms are all liable to abuse, a compound form must of course be less so than

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either. Without admitting or disputing the correctness of this conclusion, it is sufficient to remark, that it does not follow from the premises; and if true, must be proved in some other way. If a compound form of government be better than any of the simple ones, merely as compound, it must be because it is supposed to combine the advantages of all three. But for the same reason it must also be supposed to combine their disadvantages; and thus the argument would make out this form to be at the same time the best and the worst of all. The value of this, as of the other forms of government, must be settled by an accurate examination of its theory, and practical effects; which is not attempted in the work before us. It will of course not be expected that we should enter here into the discussion of so extensive a question.*

* Most of these disputes, respecting the comparative value of different forms of government, are entirely verbal. Nothing can be more vague than the meaning of the names of the three simple forms; and one or two accurate definitions would be found, in general, to remove entirely the subject of controversy. This result actually happened in the case of an attempt at an argument upon the respective merits of the monarchical and republican forms of government, made in France by the Abbé Sièyes and our well known countryman Thomas Paine. About the time of the adoption of the constitution of 1791, Sièyes had been accused by the aristocratic party of being no better than a republican in disguise. This was probably true, taking the term *republican* in the sense in which they understood it: but the time not being ripe for throwing off the mask, he thought it necessary to defend himself from the imputation: and published a letter in the *Moniteur*, in which he not only denies the charge, but offers to enter the lists with any honest republican, and to prove to him, that the citizen enjoys more liberty in a monarchy, than he does in a republic. The author of the Rights of Man, then acting as a missionary of liberty in *partibus infidelium*, felt himself piqued by this public defiance; and wrote to Sièyes two days after, in the *Moniteur*, that, though he was just on the point of setting off for England, he would accept the challenge with pleasure, and would undertake to make good his point within the compass of fifty pages. He professes the highest respect for the talents and character of his adversary; and even avows that he is no personal enemy to kings, but sincerely wishes, on the contrary, to see them all enjoying the honorable and happy condition of private citizens. The objects of his aversion are the miseries and vices that attend the monarchical form of government; or, in one word, the *whole hell of monarchy*. In the course of his letter he remarks, by way of explaining his views, that he does not mean by a *republic* the form of government established under this name in Holland, or in Italy, or in any other single country; but that he means a representative government, founded on the basis of the rights of man, as proclaimed in the declarations of France and America. The wily Abbé, entertaining probably the same opinion at bottom, or perhaps repenting by this time of his rather imprudent offer of engaging in a public controversy, upon a point so delicate in its reference to the French politics of that day, proceeds to escape from the difficulty by a definition of terms. He begins his explanation, published a week after in the *Moniteur*, with a number of compliments to the talents and services of his adversary, and offers him the tribute of his gratitude and high esteem. He then observes, that Mr Paine supposes him to have given a challenge,

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The third principal subject which is treated by Cicero, in the dialogue before us, is the constitution of the Roman Republic. The part of his remarks now extant is however a mere abstract, in a very concise and even meagre form, of the early history of his country. Much of the second book, in which this inquiry is entered upon, is unfortunately lost; and the fourth, in which there is some reason to suppose that it was taken up again, has entirely perished. In a scientific point of view, the loss of this part of the work is perhaps more to be regretted than that of the rest. An analysis of the political institutions of Rome by Cicero must have conveyed much instruction upon various points, that are now uncertain; and that will never perhaps be fully explained, unless some of the other lost treatises of the ancients upon the subject shall hereafter be brought to light. The historical abstract given by Cicero, is distinguished by the same elevation of thought and majesty of style, that prevail through all his works, but throws no additional light upon the events of the period he describes. He makes no use of critical rules in selecting his facts; and acquiesces without hesitation in the current traditions of the country, as we find them recorded in Livy and the other historians. The correctness of these traditions has been much questioned in the course of the last century; and the inquiry may be considered as one of the most curious and interesting historical problems. M. Ville-

and accepts it; that he has not given a challenge, but that, nevertheless, he should be very happy to furnish so distinguished an author with an occasion of publishing some more truths; and that as a preliminary to the argument, it is only necessary to come to an understanding in regard to the terms of the question. He states that, as Mr Paine does not mean by a *republic* the form of government existing in Holland, or in Italy, so he is far from understanding, by *monarchy*, the constitutions of Turkey or of England; that he does not propose to defend *the whole hell of monarchy*, or any other hell, but simply *monarchy;* and that, by monarchy, he does not understand a despotism, or even a hereditary royalty, but a government in which MONOS, *a single person*, ARCHETAI, *exercises the chief magistracy;* that this single person may be elective in a monarchy, as well as in any other form; and that the opposite of monarchy is not an elective, or a representative government, but a *polyarchy*, or a government in which POLLOI, *several persons*, exercise the chief magistracy; that the term *republic* does not indicate any particular form of government, but means a government or body politic in general; and that the question between him and Mr Paine, precisely stated, is the following: *whether monarchy or polyarchy be the better form of a republic.* The ground of the controversy being thus narrowed, it does not appear that our countryman thought it worth his while to engage in it; and the decisive fifty pages were never written. The explanation of Sièyes, as the reader must perceive, is little better than a *jeu d'esprit:* but it serves to shew the vagueness of the terms.

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main has recapitulated, in a summary way, the *pro* and *con* of this argument in a pretty long note, which we think our readers will not be displeased to see entire. It is as follows:

'Cicero now proceeds to examine the state of Rome at the different periods of its history, beginning with the kings. This inquiry would be more interesting, perhaps, than any speculative discussion, if it presented a new view of the Roman history. But the author adheres constantly to the current traditions; and his reflections suppose the same facts that are given by Livy and the other historians. Most of these facts, especially such as relate to the earlier periods of the city, have, as is well known, been controverted by modern critics. This subject, which has lately been revived in Germany, was much discussed by our own [the French] writers of the seventeenth century. There is a dissertation by M. de Pouilly, in the sixth volume of the Memoirs of the Academy of Inscriptions, in which he attempts to prove that the history of Rome, for the two or three first centuries, is wholly destitute of authenticity. He states that the earliest historians, Cincius and Fabius Pictor, lived at least five hundred years after the date of the foundation of the City; and that all the ancient documents, which they might have otherwise consulted, must have perished at the burning of Rome by the Gauls. He then shows that several facts related by Livy, are manifestly copied from Greek traditions. Thus, the story of the Horatii and Curiatii, with all its marvellous and romantic circumstances, including the love of the sister of the conqueror for one of the conquered, and her assassination by her brother, is to be found in a fragment of the *Arcadica* of Demaratus, extant in Stobæus; and is told as a part of the history of the wars of the two Arcadian cities, Tegea and Pherea. M. de Pouilly also discovers the character of Scævola in a Greek hero celebrated by Agatharcides. He then shews that the traditions of the Romans are often contradicted by foreign testimony. Thus the account given in Livy of the defeat of the Gauls by Camillus, in the midst of the ruins of Rome, is shaken by Polybius, who states, that after besieging the capitol nine months, they voluntarily retired upon hearing that their own territory had been invaded by the Venetians. From these and other facts this writer draws the conclusion that, independently of the manifestly fabulous character of a part of this history, the accounts which appear

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more probable are entitled in reality to very little credence. The same opinion is supported by additional proofs and observations, in the curious dissertation of Beaufort on the uncertainty of the early history of Rome.

This theory was however contested at the time by other very learned men. Sallier, also a member of the Academy of Inscriptions, answered the objections of his colleague in two able memoirs. He establishes, in these papers, the existence of documents earlier than the fifth century of Rome, which were consulted by the most ancient historians. Cicero mentions these documents in his treatise on the orator. 'From the very foundation of Rome, he observes, down to the time of the high-priest Publius Mucius, it was the duty of the high-priest to make up every year a register of the principal events that had happened, and to inscribe it upon tablets preserved in his house, to which the public had access. This register is commonly called the *great annals*.' In another passage, Cicero, speaking of the same collections, inquires: 'Where, but in the annals, are we to look for an account of our wars; and of all our political history? where can we find a richer storehouse of great examples and incontrovertible authorities for use in conduct and in speech?' In a third passage he also draws conclusions from these ancient documents in regard to the eloquence of the early speakers; and finally mentions them in his treatise on Law, where he avows, at the same time, that the Romans had not then any history worthy of the title, and introduces Atticus inviting him to undertake such a work. Here then we have certain proofs of an uninterrupted series of annals, written by the high-priests, giving an account of a great number of events, and including even some notice of the orations delivered before the senate and the people. Of this class probably were the ancient collections, the books of the Augurs and the hymns of the Salian priests, from which Varro had obtained the complete acquaintance with the Roman antiquities, for which he was so much admired by Cicero. To this class of documents must be added the acts of the government, such, for example, as the tables of the enumerations or *Census*, spoken of by Dionysius of Halicarnassus, and from which Varro quotes a passage in his work on the Latin language; the ancient treaties, one of which is mentioned by Dionysius, in the following passage:

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"We see at the present day, in the temple of Jupiter Fidius, called by the Romans *Sancus*, the treaty made by Tarquin with the Gabians. It is written entire upon a wooden shield covered with leather." Polybius quotes at full length a commercial treaty made with the Carthaginians soon after the establishment of the republic under the consulship of Junius Brutus and Marcus Horatius; and states that the original was deposited in the archives of the Ediles, near the temple of the Capitoline Jupiter. These documents were so numerous, according to Suetonius, that when the capitol was burnt, in the time of Vespasian, there were destroyed or lost no less than three thousand brazen tablets, inscribed with the decrees of the senate and of the people, and other public acts. This collection was renewed by Vespasian from other sources. It is well known that the laws of the twelve tables were extant in the time of Cicero; and it is even probable that some of those made in the time of the kings were also preserved, as short fragments of them are cited by Aulus Gellius and Servius. Finally, Livy alludes repeatedly to books written on linen, *libri lintei*, which can only have been the public annals of some very remote period. Here, then, we have a great variety and abundance of public documents which the early historians had at their disposal, and appear to have employed; and which must be admitted to establish to a certain extent the authenticity of their accounts. Still, however, there are very great improbabilities in some of these accounts; as, for example, in the length of time supposed to be occupied by the reigns of seven elective kings, three of whom were assassinated, and one dethroned; and who are yet said to have reigned in the whole two hundred and forty-two years, giving a mean length of nearly forty years for each reign, while, according to the calculations of Newton, the mean length of an hereditary king's reign is only about twenty. What are we to think of the public works attributed to Ancus Martius, and supposed to have been finished in the hundredth year of the City, which are yet so magnificent, that in the time of the Republic they could hardly be kept in repair, and have long since fallen to ruin? Could these have been executed by a half-civilized city still in its infancy? Cicero himself admits, that of the history of Rome under the kings, we really know with certainty nothing but their names. We have

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thus endeavored to expose in a general way the leading points on both sides of the question. The conclusion from the whole would be, that the early history of Rome is in every way so doubtful, that there is even room to doubt the propriety of doubting it.'

We confess that we cannot help thinking the learned Frenchman's conclusion more pointed than correct. If Cicero, with all the means that he possessed of obtaining the most accurate information upon the subject, still affirmed that of the whole mythological and poetical narrative entitled *the history of Rome under the kings*, there was nothing certain but the names of these magistrates, we cannot admit that it is possible at the present day to doubt the propriety of doubting the authenticity of this history*. M. Villemain, or the writers from whom he borrows his opinion, have involved the question in unnecessary obscurity, by not distinguishing sufficiently the period to which it relates. From the date of the beginning of the Republic, or soon after, it is generally admitted that the history of Rome is in the main authentic, although subject to criticism in its details; and the whole mass of public documents relied upon by M. Villemain's authorities with one or two single exceptions, and these doubtful, are posterior to that date. The uncertain period is that of the kings; and there is no evidence, nor any reason to suppose, that the account we have of it was made up from any public documents whatever. The Roman history of Mr von Niebuhr, the present Prussian minister at Rome, treats this subject in a very satisfactory way. A field of inquiry has lately been entered upon by the scholars of Europe, from which we may ultimately expect some new light upon this question; we mean the investigation of the affinities of languages. It has been ascertained of late that the Sanscrit or sacred language of India, the Greek and Latin languages, and the Teutonic dialects of modern Europe, are all founded on a common basis; and that the resemblance is peculiarly remarkable between the Sanscrit and Latin forms of this widely extended tongue. This resemblance supposes of course a connexion of some kind or other between the nations that spoke them, and a thorough research into the ample monuments of Indian literature, may be expected to illustrate very considerably the

* See the Review of Mr von Niebuhr's work, in our last number.

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ancient history of Italy, and perhaps of Rome. Indeed, the mere comparison of the languages can hardly fail to produce very important results of this description. This inquiry, however, is just in its outset; and must be pursued exclusively by the grammarians for a long time to come, before the historian and the philosopher will be able to turn the fruits to account.*

3. We have extended the second division of our article to such a length that we have left ourselves but little space for the third, in which we intended to notice the labors of the French editor upon the dialogue before us. To pass them over in silence would be doing injustice to one of the most elegant and promising scholars of France, and of Europe. M. Villemain, now at the age of about thirty, has been for some years a member of the French Academy, and is well known in the literary world by several published works of great merit. His style is one of the purest and most elegant models of French prose, that has been exhibited for the last half-century; and the facility, with which he writes, is not less remarkable than the accuracy and beauty of his language. He also possesses a singular talent for extemporisation; and is now delivering lectures on history to audiences of two or three thousand persons belonging to the first circles in the capital of France. His contributions to the edition of the Republic, consist, as we have stated above, of a translation of the text, a preliminary discourse, a few notes, and three dissertations of considerable length, intended to illustrate the probable subjects of the three last books. They are all

* The eminent German scholar, Baron A. W. Schlegel, professor at the new university of Bonn in Prussia, seems to be the person now most deeply engaged in this inquiry. He publishes a journal, devoted exclusively to these researches, under the title of the Indian Library, *Indische Bibliothek*, of which three numbers only have yet appeared. In the last of these, published during the last year, he announces that he has in preparation a work on the affinity mentioned in the text between the eastern and western dialects of the ancient continent, which he proposes to print under the following title. *Etymologicum novum; sive Synopsis linguarum; qua exponitur parallelismus linguae Brachmanum sacrae cum lingua Graeca et Latina; cum reliquiis linguae Etruscae, Oscae, ceterarumque indigenarum veteris Italiae dialectorum; denique cum diversis populorum Teutonicorum linguis, Gothica, Saxonica, Francica, Alemannica, Scandica, Belgica.* The name of the SANSCRIT language is one of the most obvious and striking examples of its affinity with the Latin. It signifies *holy writing* and is equivalent to the Roman SANCTUM SCRIPTUM. The prepositions and other particles, which are among the essential and radical parts of languages, have a remarkable correspondence through the whole of these dialects. Take, for example, those which express originally the local position of one thing above another. *English*, OVER, UP, UPPER. *German*, UBER. *Gothic*, UFAR. *Latin*, SUPER. *Greek*, HUPER. *Sanscrit*, UPARI.

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beautifully written; and give proofs at the same time of a very minute and extensive acquaintance with the classic authors. The translation represents the original, as well probably as it could be represented in a dialect, less capable than almost any other of imitating the majesty and richness of the Latin. The notes are scanty and the one quoted above is the only one of much interest. The preliminary discourse and the three dissertations are the most valuable parts of the editor's labors; and without perhaps containing any wholly original views, convey to the general reader much valuable instruction clothed in the most agreeable and popular form. The discourse contains a general history and review of the dialogue. The first dissertation is an inquiry concerning the social habits of the Romans, their amusements, their modes of education, their prevailing virtues and vices, and the general course of their private life. The second is an essay on the political institutions of the Republic, as they existed at the time when the scene of the dialogue is laid; and the third examines the curious subject of the established religion. The reader will easily imagine that these important questions are not exhausted in a few short papers, occupying, in the whole, somewhat less than two hundred pages. But two hundred pages may be made to contain more valuable matter than one would at first thought suppose, when their contents are compiled with taste and good judgment from the best sources; and few readers will peruse these dissertations without profit as well as pleasure. The second contains a number of valuable suggestions in relation to the Roman government. After all that has been written upon this subject, it is astonishing how little is really known with certainty respecting it; and how many points which one would have expected to find matters of public notoriety are very imperfectly understood. The constitution of the senate, for example, is far from being so accurately known as might have been anticipated from its great importance and publicity. At the risk of protracting this article to a tedious length, we shall venture to extract M. Villemain's remarks upon this head. It is curious to compare the ideas and usages of the Romans with those of the present age upon a question, which is now considered so very important and interesting as the constitution of the principal legislative body. At Rome it seems to have engaged but

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little attention; and through all the long disputes of the Patricians and the Plebeians, we do not find that the demand of a radical reform of the senate was ever made by either party.

'The principles,' says M. Villemain, 'upon which the senate was constituted at the different periods of the Republic, have been the subject of much discussion, but are not yet fully understood. More than a century ago, a celebrated British statesman proposed this question to Vertot, the author of the *Revolutions of Rome*, who had wholly omitted to notice the point in his work. He wrote in answer a very ingenious dissertation, which is now printed with the Revolutions. Middleton treated the subject with greater ability; and Beaufort has also examined it in his *History of the Roman Government*. After all, the question is still doubtful. In the first instance, the senators were appointed by the king according to the accounts we have of this early period; but these accounts, supposing them authentic, afford, of course, no explanation of the constitution of the senate after the change of government. Livy states, in one passage of his history, that after the expulsion of Tarquin, the consul, Brutus completed the number of the senators to three hundred. This passage seems to intimate that the new senators were appointed by the consul; but in another passage the same historian represents the tribune Cornelius as stating, that the senators were formerly appointed by the king, but afterwards by *order of the people*. The phrase *order of the people*, may perhaps however be understood as an allusion to the source of the consular authority. If the senators had been chosen directly by the people, it seems probable that we should have had accounts of some of the elections which must, in that case, have been at times very warmly contested. The probability, therefore, is that after the expulsion of the kings, the senators were appointed by the consuls until the introduction of the magistracy of the censors in the year 310, the intervening time being about sixty years. As long as the consulate was an exclusive privilege of the Patricians, it is probable that the senators were all taken from this order; but there is no reason to suppose that the mere quality of Patrician conferred of itself the senatorial character. At this period the senators do not appear to have held their places for life. A census

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or enumeration of the people, was taken every five years; and at these times the consuls or military tribunes appear to have made out a list of the senators at their own discretion, omitting the former members, and appointing new ones, as they thought proper. It does not even seem that at this period it was thought dishonorable to the character of a senator to be omitted in the new list. When the office of censor was created, the appointment of the senators devolved upon these magistrates; and soon after it became dishonorable to be excluded from the list. This fact is expressly stated by the grammarian Festus. 'In ancient times,' he observes, 'it was not thought disgraceful to a senator to be excluded in the making up of the new list. The kings admitted into the public council, and removed from it, at pleasure, such persons as they thought proper; and the consuls and military tribunes generally appointed their own relations among the Patricians and afterwards among the people. But the law of the tribune Ovinius made it the duty of the censors to appoint the best men from all the classes; and after that time it became dishonorable to be excluded.'

It is therefore certain that after the introduction of the censors these magistrates had a very considerable influence in the appointment of the senators; but we have no means of ascertaining the precise character of their functions in this respect, or the restrictions under which they exercised them. The Ovinian law, cited by Festus, which probably regulated the details relating to this subject, is not extant. Livy, in speaking of the authority of the censors in this respect, employs the phrases—*read the list of the senate—make out the list of senators.* It appears, however, from different passages in the classical writers, that after this period the old senators were retained for life unless there were particular reasons to the contrary; and that the exercise of the more important magistracies called *curule* gave the right of admission to the senate. This right, however, required the confirmation of the censor; but when the censorship was interrupted, seems to have been exercised without. This appears by the example of Cicero himself, who took his seat in the senate by virtue of having held the office of quæstor at a time, when, in consequence of the civil wars of Marius and Sylla, the censorship was vacant for seventeen years. The office of tribune also

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gave admission to the senate by virtue of a law passed in the year 623. We learn from Dionysius of Halicarnassus that a certain age was necessary; but what it was is not precisely known. There was a difference at first between the Patrician and the Plebeian senators, the former being called *fathers*, and the latter *conscript fathers;* but Cicero always employs the latter title in addressing the whole senate. A qualification of property seems also to have been required, at least in the later periods of the Republic; but it is certain that the *curule* magistracies conferred this dignity of themselves and without regard to any other condition. Thus the Patricians, as well as the Plebeians, were obliged to obtain the public favor by giving proofs of talent and virtue, before they could gain admission into the senate; and hence this body was generally composed of the ablest and best men in the Republic. It is, therefore, not difficult to account for the great talent generally displayed by the senate; nor for the remarkable steadiness and perseverance that distinguished its policy.

Notwithstanding the uncertainty that involves almost all the details relating to the constitution of the senate, it seems therefore to be clear that the members of this body, during the middle and latter periods of the Republic, were in substance chosen for life by the people, not as senators, but as high public officers, who became, by virtue of their places, senators for life upon quitting them. The practical results of such a system are probably not materially different from those of the method of election for short terms adopted in this country. We generally find that a member of congress or of the state legislatures, though his regular term of service may perhaps be only a year, is reelected as long as he will consent to serve, unless excluded from party motives, or for some other particular reason: and citizens, who have discharged with honor any public functions of considerable importance, are almost universally sent to the legislative bodies, if they are willing to go. We rather regret that an exception from this latter usage seems to be gradually establishing itself, in regard to the high office of president of the United States. We cannot think that it would have detracted at all from the real dignity of character of the three illustrious living statesmen, who have held this post, had they consented, upon retiring from it, to take a seat in the senate of the union; and

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we are sure that their presence in that august assembly would have given additional gravity to its proceedings, and rendered a real service to the country. To return to the Roman senate, we agree with M. Villemain in thinking that its constitution, as far as we are acquainted with it, was in substance good. Had the whole legislative power been vested in this body, there would have been little to object to, in this part of the political institutions of the Eternal City. But there were great and deeply seated vices in other institutions still more important than the forms of legislation and administration, which contaminated from the first the good effect resulting from the excellence of these forms, and finally ruined the Republic.

In the last dissertation, M. Villemain examines the religious establishments, and the state of opinion upon this interesting subject. He considers the question, whether the principal citizens, who officiated as priests and augurs, really had any faith themselves in the gross superstitions which they employed to influence the people; and supposes with an appearance of probability, that in the early periods of the Republic, a great part of them really shared in this respect the credulity of the mass. In fact, the number of individuals of the educated class, who are able to emancipate themselves from the dominant prejudices of their age and nation is exceedingly small even in highly civilized communities, and of course still smaller in ruder ones: and the superstitions of the Romans, however gross they appear to us, were not more so than those of most other heathen countries. We have certainly individual instances of persons that appear to have treated the religious ceremonies with contempt; as was the case with a general bound upon a maritime expedition; who finding that the sacred chickens would not drink—which was thought a bad omen—threw them into the sea, and told them with an oath, that if they did not like fresh water, they should have salt. But an act of this kind is as likely to have been the effect of a momentary pettishness, like that which induces a savage to flog his god when his prayers are not granted, as of a rational contempt for superstition. There were however doubtless times and cases in which the instinctive good sense of some more generous minds rose above the influence of these prevailing opinions: as the poet of the Iliad represents his Trojan hero as declaring, that 'he cared not for the flight

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of birds, whether they took their course to the right or to the left; and that the only omen he wanted, was the consciousness of serving his country.' It is also certain that the ceremonies were constantly employed at Rome for merely political objects. A consul or a tribune who found it convenient to adjourn a public meeting, always had a clap of thunder at command to assist him. But with all these exceptions and qualifications, there is every reason to suppose that the whole mass of the people, high and low, in the earlier periods of the Republic, believed in the truth of their religion as firmly and as faithfully as we do in that of ours. The progress of civilization and knowledge increased the number of sceptics: but the old religion had not entirely lost its hold upon enlightened minds, even after the establishment of christianity as the creed of the country. It appears quite certain from his writings, that the emperor Julian, with all his philosophy and wit, was a sincere and even enthusiastic pagan in the plain and usual sense of the term.

However gross and material may have been the religion of the Romans, they appear to have met with better success, and indeed to have exercised more wisdom, in determining the mode of its connexion with the state, than almost any country in which a religious establishment has ever existed. The union of church and state, as understood in most of the European countries provided with religious establishments, is in reality a legal separation or divorce; the functions belonging to the two departments, being committed to different, and in some degree, independent corporations, which act of necessity upon different and commonly hostile principles. A real union of church and state could only be effected by moulding the two systems into one; and not by forming a contract between them which is itself a tacit acknowledgment of their disunion. Religion and government, considered as establishments, are two forms, in which the same sovereign power, to wit, the nation, representing for this purpose the order of providence, declares the same laws under different sanctions. The *unity* and not the *union* of church and state is therefore the true theory of a religious establishment. All ministers of religion should on such a system be considered as political functionaries, and all political functionaries as ministers of religion: so that the same institution might at once

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consecrate the state, and civilize the church. Such was in substance the state of things in the Roman Republic.

It is time however to bring this desultory article to a close. In dwelling at considerable length upon the recovered fragment before us, we have not only had it in view to make the reader acquainted with this particular work, but have gladly taken the occasion to offer our feeble tribute of applause to the writings and character of the author. We shall feel ourselves well rewarded for our labor, if any of our readers who may be led by this notice to peruse the Republic, should be induced by the profit and pleasure which this study will certainly afford them, to familiarize themselves with the splendid eloquence and sublime philosophy of the Father of his Country.

ART. IV.—*The General Laws of Massachusetts, from the adoption of the constitution to February* 1822, *with the Constitutions of the United States and of this Commonwealth, together with their respective amendments prefixed; revised and published by authority of the legislature, &c. by Asahel Stearns and Lemuel Shaw Esquires, commissioners. Theron Metcalf Esq. Editor.* 2 vols. 8vo. Boston, 1823.

WE congratulate the magistracy and the legal profession in Massachusetts on the appearance of the present revised edition of our statutes. A considerable period has elapsed since the last revision of them, and the necessity of a new one had become very sensibly felt, in consequence of the unwieldly bulk of the acts at large, the difficulty of procuring perfect sets of all the statutes, the confusion arising from having acts public and private, repealed and unrepealed, mingled together without distinction, and many other defects in the mechanical arrangement and form of the old copies, which are remedied in the present edition. It is printed, so far as respects the typographical execution of it, in a style of neatness and liberality, very creditable to the publishers, and with a freedom from errors which can be justly appreciated only by those, who have had actual experience of the difficulties attending any attempt to render such works immaculate. The names of the gentlemen commissioned by the legislature to prepare the

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edition for the press, and of the editor whose aid they enjoyed, would be of themselves an adequate pledge to the public that no pains would be spared, nor any qualifications wanting, to ensure for this edition the greatest completeness both in plan and execution. What the commissioners have done, cannot be stated better than in the following extracts from their prefatory notice.

'The resolve of the legislature, under which this edition of the statutes is published, has been the guide of the commissioners in preparing it for the press. It has been their design to insert all public acts of a general nature and applicable to the commonwealth at large, except such as have ceased to affect existing rights, or would not illustrate the history of the law. They have also inserted a few special and private acts, which are of general interest, either from their connexion with public acts, or from the importance of the subjects to which they relate.

'The acts of each legislature have been divided into chapters, and numbered in a regular series from the beginning to the end of each political year. This has been done in chronological order, except in a few instances of acts wholly omitted in former editions, or inserted in the appendix to the second volume of the edition of 1807. These have been placed at the end of the year in which they were enacted, so as not to derange the numbers under which the statutes have heretofore been cited.

'The repealed acts which are retained in this edition, and those parts of acts which are repealed or have otherwise become inoperative, are printed in small type, and the repealing acts indicated by marginal references. At the end of the public acts and of the title of the private acts, reference is made to additional acts on the same subject; and acts enlarging, restraining, or modifying the text, have been referred to in the margin. The amendments to the constitution of the United States* and of this commonwealth have been indicated in a similar manner.

'In addition * to the * references which * were * prescribed by the resolve of the legislature, the commissioners have thought proper to refer to the Colony and Province laws on the subjects of the several statutes, that a view of the whole history of our legislation might be readily obtained by those who desire it.

'The title and the text of every act in this edition have been compared with the original rolls in the secretary's office, and all the errors of former editions corrected.

* The thirteenth amendment to the constitution of the U. S. is inadvertently inserted with the others, as is also the case in the edition of the laws of the U. S. published by Bioren and Duane, in 1815. It was not adopted by a sufficient number of the states to become a part of the constitution.

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'An analytical index of the contents of this edition has been prepared with considerable care and attention, and added to the second volume.'

We feel confident that the public expectations will not be disappointed in this edition, much as the community had a right to anticipate from it, when they knew its publication was entrusted by the legislature to persons so fully competent for the task as professor Stearns and Mr Shaw. So far as we can judge from the cursory examination which we have been able to bestow upon the two volumes, the execution of them is such as to do justice, in every respect, to the confidence reposed in those gentlemen by the legislature.

The republication of the statutes affords us an occasion, which we have some time desired, of inquiring into the origin, growth, sources, and effects of the most important peculiarities in the laws of Massachusetts, and of the several New England states. Through all these states there is a manifest similarity in their laws, as there is indeed in most of their institutions, in their customs, manners, and in the general tone and character of society and of the people, with the circumstances and causes of which likeness our readers are too familiar to need to be reminded of them in this connexion. As Massachusetts, beside having been the oldest colony, and beside having always retained the precedence in power and population which her start of the rest enabled her to acquire, did once embrace within her territorial limits nearly the whole extent of New England, it follows that the laws of Massachusetts present a fairer example, than can be found in either of her sister New England states, of their departures from the principles and elements of the contemporary laws of England. An examination, therefore, of the rise of these differences in Massachusetts will serve as an illustration, at least, if not as a complete development, of the nature of similar differences throughout this section of the Union. The original settlers of Connecticut, in their individual spirit, and in their public counsels, are almost identified with those of Plymouth and Massachusetts; these last, with Vermont, New Hampshire, and Maine, have in past times constituted the same jurisdiction; and Rhode Island alone, as having been established in the principles of genuine religious freedom, bears a more peculiar stamp on her civil institutions, but not so essentially

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peculiar as to prevent her being comprehended in the same class with the other eastern states.

We shall not institute this comparison boastingly, however justly we may pride ourselves upon the improvements, which we have made in this country, upon the common law properly so called,—with whatever emotions of honest exultation we might reasonably point to these improvements. For we apprehend that oftentimes, when professional men among us are bestowing exalted praise upon the common law, they lose sight of the important fact that the common law in England is radically different from the system which bears the same name in America. The common law, properly speaking, is that in which Hale and Holt and Mansfield and Ellenborough adjudicated,—which Coke and Blackstone commented upon,—which upholds England's government by king, lords, and commons,—which marks out the jurisdiction of her courts of chancery, king's bench, common pleas, and exchequer,—which fixes the rules for the descent of property,—which engendered and perpetuates the *rotten borough* principles of representation,—which did authorize the tenure of knight's service with the rest of the antiquated burdens of the feudal system:—for all these things, with a thousand others of the same stamp, are among the peculiar discriminating qualities of the common law, inherent in its very essence, but irreconcileably at war with all our dearest institutions. It is the common law of Virginia, of Massachusetts, of New York, or of Pennsylvania, which Americans must intend when they eulogize the common law; and we unite heart and hand with them in their warmest expressions of veneration for this law, since light does not differ more from darkness, than this does from the common law as flourishing on its native English soil. But without entering, on the present occasion, more particularly into the comparison between the laws and institutions of our country and those of England, in a general view, we proceed to the elucidation of the main inquiry, whence did these well known differences originate? And in the prosecution of this inquiry we confine our remarks to Massachusetts, as well for the reasons before mentioned, and for the preservation of some little unity of design in the present article, as because the subject will be more thoroughly understood with these restrictions, than if we spread out our investigation through the laws of other states.

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The first cause, which presents itself, of many of the differences in question, is the charter of incorporation originally granted the colony, and afterwards displaced for the province charter. By virtue of these instruments, and under the express provision of one of them, our representative government was originally established and subsequently confirmed, together with the authority of a governor and of a general court; and the same charters relieved us of the whole system of the feudal tenures, with all their incidents, qualities, principles, and consequences. There is yet another admirable feature in the political institutions of America, of which our charter and the charters of the sister colonies were the original, namely, the prevalence of written constitutions. We stop to mention this fact more particularly, because the idea of these constitutions, which are among the peculiar boasts of our country, and which the French, in imitation of us, and other nations of continental Europe in emulation of France, have been struggling so pertinaciously to obtain and secure, was undoubtedly suggested to our ancestors in consequence of their habitual reference to the colonial and provincial charters for the tenure by which their political rights and immunities were holden. Our constitutions, indeed, differ essentially from the charters in nature, the latter being mere grants of privileges from the crown, whilst the former are a voluntary limitation of their own privileges on the part of persons who recognize no political superior; but the constitutions closely resemble their prototypes in this, that the charters were then, as constitutions are now, a recorded system of fundamental law for the guidance both of the people themselves and of the delegated holders of their authority. And the fact that such was the origin of our constitutions will serve to explain the facility with which they were introduced, the ready acquiescence of the country in their establishment, and the immediate efficaciousness, which they enjoyed when put in operation. For they were not, either in principle or in form, a radical innovation upon the social order, calculated to impress the people unfavorably by their strangeness, or to meet with obstacles to success on account of the novelty of their design. And happy would it be for those nations, which are following our example in this respect, if, instead of having to force their constitutions upon a portion of the body politic that opposes them as adverse to

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their prejudices, principles, power, and interests, they had been prepared, like ourselves, to greet constitutions as an old and tried friend reappearing under more imposing auspices.

The next source of difference, to be adverted to, is the local situation of our ancestors, in respect of their condition as an infant colony, separated at a great distance from the parent country, in a desert land, where it would have been absurd to think of carrying into effect all the complicated laws of a powerful, populous, and refined empire. The colonists uniformly considered themselves justified in leaving behind them so much of the laws relative to the constitution of courts of justice, the punishment of offences, the support of established clergy, the artificial refinements and distinctions in the nature of property, and the like, as were wholly inapplicable to their altered circumstances; and the exercise of such a right must obviously have operated as a kind of discretionary power in the rejection of old and the adoption of new rules of conduct, wherever the colonists were of opinion that such a change was expedient or desireable. Under the first charter, this discretion was pretty liberally construed, while the colonists acted independently of the authority of the metropolis; but when the growing boldness of the colonists had attracted the attention of the British ministry to the increased importance of the colony, and the provincial government was established in Massachusetts, the people were made more sensible, as we shall show hereafter, of their dependance on Great Britain. At the time when Massachusetts was colonized, the law with regard to this point was not so well understood in England as it was at a later period. The celebrated case of the *Postnati*, indeed, which decided that, a person born in Scotland after the descent of the crown of England to king James, was entitled to the privileges of a natural born subject in both kingdoms, occured at the period under consideration, and served to put to rest many a *quæstio vexata* concerning the relative legal conditions of inhabitants of different countries united under the same general allegiance. But the questions agitated in this case referred only to the situation of the people of a country conquered by the king of England, or belonging to him by cession, descent, purchase, or possession, previous to his obtaining the crown; and a multitude of illustrious examples, applicable to such a case,

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grew out of the numerous fiefs, which the kings of England held at various times in France, and out of the conquest of Wales and Scotland. But the condition of English-born subjects, who emigrated to an uninhabited country, or to a country in the possession of savages, and formed a settlement there, was a case too novel to have yet had its legal operation well ascertained. So late as the reign of William and Mary it was holden that if an inhabited country was discovered and settled by English subjects, all laws in force in England were in force there; and that in case of a country conquered from infidels, their laws continued in force until declared void by the conqueror, unless they were inconsistent with our religion, or enacted any thing that was *malum in se*, or were silent, when the country was to be governed according to the rules of natural equity. These principles were affirmed by the lords of the privy council in 1722, excepting that they considered the laws of the victor as immediately taking effect, wherever those of the vanquished were deficient or abolished, without making any reservation as to the applicability of the laws of the conqueror to the circumstances of the conquered country. But all the cases unite in maintaining, that where an infidel country had been subdued by Englishmen, in which predicament the colonies were regarded, it did not become *ipso facto* subject to the laws of England. Hence it was laid down by sir William Blackstone, that the common law of England, as such, had no allowance or authority in the American plantations belonging to Great Britain. This being the concurrent decision of all the English law-books, it is evident that, although the charter given the colonists required their laws to be consistent with the English, yet, as the charter provided no test of that consistency, the determination of it was necessarily left to the colonists.* And out of these circumstances arose the *common law* of Massachusetts, as explained by chief justice Parsons.†

'Our ancestors,' are his words, 'when they came into this new world, claimed the common law as their birth-right, and brought it with them, except such parts as were judged inapplicable to their new state and condition. The common law, thus

* See Coke's Rep. pt. viii; Salkeld ii. 411 and 666; Mod. Rep. iv. 215; P. Williams, ii. 75; Blackstone's Com. i. 107.

† Massachusetts Reports, ii. 534. Com. *vs.* Knowlton.

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claimed, was the common law of their native country, as it was amended or altered by English statutes in force at the time of their emigration. Those statutes were never re-enacted in this country, but were considered as incorporated into the common law. Some few other English statutes, passed since the emigration, were adopted by our courts, and now have the authority of law derived from long practice. To these may be added some ancient usages, originating probably from laws passed by the legislature of the colony of Massachusetts Bay, which were annulled by the repeal of the first charter, and from the former practice of the colonial courts, accommodated to the habits and manners of the people. So much therefore of the common law of England as our ancestors brought with them, and of the statutes then in force amending or altering it; such of the more recent statutes as have been since adopted in practice; and the ancient usages aforesaid, may be considered as forming the body of the common law of Massachusetts.'

In determining what portions of the common law to reject, and what regulations to substitute in their stead, our progenitors were guided partly by the external circumstances, which we have just mentioned, but still more by their own character, by the fact that they were exiles and sufferers for conscience's sake, by the austerity of their moral principles, by the unconquerable spirit of independence, which armed them to endure all afflictions and brave all dangers, with unshaken resolution, in vindication of their inalienable right to worship God according to the dictates of their own consciences. They did not fly to *this outside of the world*, as they forcibly termed it, impelled by mere sordid avarice to dare the perils of untried seas and of untrodden wildernesses. Had they been needy adventurers, actuated only by the love of gain, there might have been copious chapters in their laws for parcelling out the subject territory and its population into *repartimientos*, but there would have been few clauses open to censure for any severity of animadversion against unsound morals or questionable faith. They did not flatter themselves, in their first feeble attempts at a settlement, that they, poor wandering fugitive outcasts, were establishing the foundations of an empire, which, in the swift development of its energies, should soon unite the freshness and elasticity of youthful strength with the refined skill and persevering vigor of mature age. No ambitious projects of conquest, in short, no deep-laid schemes

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of commercial speculation, none of the ordinary causes of an overflowing population, or of poverty and infamy at home, conduced to the emigration of our forefathers, but the high and holy motive of devotion to what they esteemed the cause of pure and undefiled religion. Such being the influences, under which they acted, it is not extraordinary that a deep and pervading sentiment of religious enthusiasm controlled the measures of their government; nor is it extraordinary, considering the long series of persecution, by which their feelings had been harrassed and irritated into a state of unnatural violence, that some of their laws should breathe a more intolerant spirit, than a liberal policy could justify in less aggravating circumstances.

The operation of the various causes, to which we have referred, will be most readily discerned, and their influence on our system of jurisprudence best appreciated, by considering what were in substance the colonial laws; an inquiry, which we can the more successfully pursue, inasmuch as these laws formed a code that was complete in itself, unique in its spirit, peculiar in its elements, and sufficiently remarkable to merit the attention of scientific jurists. An examination of it will afford ample illustration of the preceding remarks, at the same time that it will disclose the origin of many of the most important singularities in the existing laws of Massachusetts as compared with those of England.

By the colony charter, the first settlers of Massachusetts were constituted a corporation, with the usual powers of such a body, and with *no others*:—that is, to sue and to be sued as natural persons may; to purchase and hold lands to them and their successors; to have a common seal; and to enact by-laws, which should be binding as to themselves, unless contrary to the laws of the land. They had high privileges, it is true, for private persons;—they enjoyed a temporary exemption from internal taxes and from the customs, and they and their descendants were entitled to all the rights of Englishmen; but they possessed few of the powers essential to the being of an independent state. They had no authority to inflict capital punishments, nor to erect courts for the probate of wills or courts with admiralty jurisdiction, nor to create a house of representatives, nor to levy taxes on the inhabitants, nor to incorporate towns, colleges, parishes, or other like communities.

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Now these powers are evidently inseparable from the very nature of political authority; and all of them, from the mere necessity of the thing, were unhesitatingly assumed immediately after the emigration of the colonists, and continually exercised by them until the resumption of the first charter by king Charles II. The utter inadequacy of that charter to meet the exigencies of a provincial government would be sufficient in itself, if there were no other facts of the same import, to show that neither the crown-lawyers in framing, nor the grantees in accepting, such a charter, had it in contemplation to constitute a system of government for an extensive colony in parts beyond the sea. They simply entertained the idea, as we took occasion to observe in a former number,* of forming a trading and planting corporation. The very act of transporting the charter across the ocean was, in the opinion of Dr Robertson, if not a violation of the letter of the instrument, yet certainly incompatible with its spirit. The whole administration of provincial government itself was, therefore, in its very outset, as well as in its after course, an act of usurpation in respect of the prerogatives of the crown, and an evasion,—justifiable and necessary, we admit, but still an evasion,—of the laws of the metropolis. Bearing this circumstance in mind, we shall be prepared for what might otherwise occasion surprise, when we come to consider the multiplied and manifold violations of their charter in lesser particulars, which the colonists boldly ventured upon, in obedience to that unconquerable spirit of independence, which never ceased for a moment to be the darling object of their devotion, and the controlling principle of their lives.

The charter of Massachusetts vested the supreme authority in a governor, deputy-governor, and eighteen assistants,—all to be chosen by and from the freemen,—and in the freemen of the corporation themselves, who were styled the general court of the corporation;—a name, which our legislature has retained unaltered through all the changes which our government has since undergone. At the first general court, which was was assembled (October, A. D. 1630) the freemen voted, in violation of their charter, to delegate the legislative and executive powers to the court of assistants; but a few years

* N. A. Review, xv. p. 25.

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afterwards (1634), when the freemen had become numerous in consequence of the influx of emigrants, they accomplished a complete revolution in the government by choosing deputies to represent them in the general court, and fixed the frame of government, as it continued, with slight variations, until the forfeiture of the colonial charter. Here, then, we find the germ of that system of elective representation, which, in its subsequent growth, has proved to be another of the most valuable of our political franchises. But the great moving principle in the minds of the colonists was most strikingly displayed by the regulation, adopted at a very early period, that they, and they only, who were members and communicants of some church in the colony, should be freemen of the corporation. This extraordinary law, which placed all temporal power ultimately in the hands of the clergy, and excluded a large portion of the inhabitants of the colony from any participation in the privileges of citizenship,* occasioned great complaints in England; on which account it was nominally repealed on the restoration of the Stuarts. The repeal, however, was artfully clogged with so many conditions as to render it wholly ineffectual, and such continued to be the sole qualification of a freeman so long as the government subsisted. The freemen assembled yearly for the choice of magistrates and deputies out of their own body, whom the law required also to be of orthodox principles in religion. The assistants were generally eight or ten in number, and the deputies two for each town, or one for every twenty corporators. The governor and assistants in one room, and the deputies in another, each body having a negative on the other's votes, constituted the legislative assembly. The governor had the power of calling the

* This appears to have been a distinction, however, that was not universally courted; for we find a law made in 1647, which recites that, 'Whereas many members of churches, to exempt themselves from public service, will not come to be made freemen, it is ordered that no members of churches within this jurisdiction shall be exempt from any public service they shall be chosen to by the inhabitants of the several towns,' &c. In the appendix to Hutchinson's History (v. i. n. 2 and 3) are two papers in which the reasons of this rule are discussed. Lords Say and Broke objected to it, that it would 'bring in papal excommunication,' that it would 'draw all things under the determination of the church,' that the state would lose the service of many men, who, though not religious, had 'eminent gifts of wisdom, courage,' &c. These objections were considered by the assistants and Mr Cotton. See on the subject Hutchinson v. i. pp. 222, 231, 233, 236, and the ap. ut supra. See also Colony Laws, c. 49.

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general court together, but it was adjourned, prorogued, and dissolved by its own authority. The general court, and that body alone had power to enact laws, levy taxes, and grant proprieties in land; to coin money; to regulate the press; to erect corporations; to pardon sentenced convicts; and in general to exercise all other transcendent jurisdiction. It was also a court of appeals and review in the last resort. The governor acted as one of the assistants, excepting that, if the votes were equally divided, he was counted twice to produce a decision. The court of assistants, consisting of the governor, deputy-governor and assistants, composed the executive authority; they were a standing council of the colony in the vacations of the general court, with power to levy soldiers and otherwise provide for emergencies; and they were a judicial court for hearing civil causes of appeal and of divorce, and all criminal causes extending to life, member, or banishment.

Such as we have thus described it, was the simple form of the colonial government. Although it was not created at once and many portions of it were added from time to time, as the public need suggested the expediency of improvement in the original plan, yet in substance, in spirit, in general principles at least, if not in all its minuter details, it may be considered as the system which prevailed from the time when the colonists emigrated to this country, until their charter was taken away and the corporation dissolved.

Before proceeding to give an account of the laws, by which the rights of individuals were regulated under this system, we ought to state some facts connected with the compilation of those laws. The colonists, as we observed before, upon their arrival in America, very unceremoniously freed themselves of the burden of the English laws, notwithstanding the clause in their charter, which required that the laws of the colony should not be 'repugnant to the laws and statutes of the realm of England.' During the first three or four years after the arrival of the emigrants, justice was administered according to the sentiments of natural equity entertained by the judges, who had recourse to no authority but the Mosaic law, to which they conformed in all cases where they could wrest it into any real or imaginary application to the circumstances of the colony. Hutchinson records some very characteristic instances of the rude and simple justice of our forefathers in the

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period of our national infancy.* But as the settlements became more extensive, the necessity of a firm and stable system of laws urged itself more forcibly upon the colonists, and committees, consisting of the principal persons of the clergy and laity were appointed from year to year to frame a suitable code.† While this was in preparation, such laws were occasionally enacted as could least be dispensed with, and in 1648 the whole compilation was completed and promulgated under the direction of the general court. In presenting our readers with a review of the contents of the code, we shall, for the sake of perspicuity, arrange our comments in that order, which, notwithstanding its want of logical exactness, has acquired a prescriptive authority in jurisprudence, beginning with the laws relating to the rights of persons in their respective relations in society, then proceeding to the laws regulating the tenure and transfer of property, next considering the course of judicial proceedings, and concluding with the subject of crimes and their punishment.

I. We have already mentioned the means of acquiring the rights of a corporator; and although personal security was extended to all residents within the jurisdiction of the colony, yet church-members alone were freemen; and they so united themselves, by oath, to each other and the state, that the consent of the whole was necessary to effect a separation. Every person was guarantied the unimpeached enjoyment of all his legal liberties, privileges, and immunities; nor could he be restrained in person or property, unless 'by virtue of some express law of the country, warranting the same,' says the act, 'or in case of the defect of the law, in any particular case, by the word of God.' The strict puritanical character of the laws, however, confined the rights of the colonists within a narrow compass, as we shall see hereafter; and no

* 'Josias Plaistowe, for stealing four baskets of corn from the Indians, is ordered to return them eight baskets, to be fined five pounds, and hereafter to be called by the name of Josias and not Mr, as he used formerly to be.'—Hutchinson, ch. v.—'Robert Shorthose, for swearing by the blood of God, was sentenced to have his tongue put in a cleft stick and to stand so for the space of half an hour.' Ibid.

† The model or first draft, from which this code was prepared, is preserved in Hutchinson's Collect. p. 161, and in Mass. Histor. Collect. v. p. 173. It was written by the famous Cotton, and is a signal instance of the extravagant excess to which superstition was carried in that age. Mr Cotton intended that the government should be a pure theocracy.

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person could leave the limits of the patent without permission of a magistrate. Slavery also was recognized by law, and that not only in the persons of captives taken in war, or sold in the colony, but in the odious form of bond-service for the payment of debts; for an insolvent debtor might be sold into servitude at the requisition of his creditor. There were no established distinctions of rank among the freemen other than such as the exercise of elective magistracies created; but these were scrupulously observed, in obedience to the austere spirit of a religious commonwealth.

The congregational was the established form of church government, in nearly its present constitution; each church having intrinsic powers for the choice of officers, and other interior regulations; subject, however, to the control and exercise of the secular authority; for if any church selected preachers offensive to other churches or to the general court, or neglected its minister's maintenance, in both these cases the general court or assistants interposed to enforce the laws. Synods were occasionally assembled, in which the magistrates assisted 'not only to hear, but to deliberate and determine;' but these synods could 'exercise,' says Burke, 'no church censures by way of discipline, nor any act of church authority or jurisdiction.'* Still the clergy possessed a less obtrusive, though equally effectual power in civil affairs by means of the deference and veneration of the people.

The system of organizing the militia, which now exists in Massachusetts, likewise had its origin under the colony government; for the colonists living at this time in the midst of warlike tribes of savages, who were kept in a state of constant irritation and hostility by the intrigues of the French in Canada, the most severe discipline was absolutely essential to the very being of the colony. At first, every male person, with some few exceptions, was required to appear in arms once in each month, which was afterwards reduced to six days in the year. Every inhabitant was obliged to furnish himself with arms and ammunition, except magistrates, elders, and the officers and students of Harvard College. The officers of the companies were chosen by the companies respectively; and the superior officers by the freemen and householders within the districts which their commands embraced.

* European Settlements in America, v. ii. p. 148.

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Beside the civil division of the colony into counties, in imitation of the mother-country, the inhabited territory was subdivided into towns with the unostentatious municipal magistracy of a small number of *select-men* annually chosen out of the body of the inhabitants, in that manner which still remains among the peculiar institutions of New England. As a portion of the country became settled, the inhabitants, within certain prescribed boundaries, were constituted a corporation with perpetual succession, and with the usual corporate powers requisite for managing the affairs of similar communities. While these miniature states, whose concerns were regulated in meetings of the inhabitants, and which were of course pure democracies in constitution, served, on the one hand, to nourish and foster in the breasts of the colonists a spirit of republican independence, on the other hand, they relieved the general court from the task of assessing and diffusing the most burdensome of the public charges, namely, those for the support of the poor, of schools, and of the highways.

The colonists regarded matrimony as a civil contract exclusively; and in conformity with this idea, marriages were universally solemnized by the magistrates. Hutchinson conjectures that this remarkable departure from the principles of the laws of England was suggested by the Scottish law, which gives the same authority in this respect to the magistrates,* and from which our ancestors copied many of the peculiarities in their political institutions. All marriages, as well as births and deaths, were recorded; and no parties could be married, without the consent of their parents, nor before their intention had been duly published by being posted up in certain public places for fourteen days, or declared at three several church-meetings. Adultery, cruel usage on the part of the husband, and desertion for a year or two were considered adequate causes of divorce; but they abolished the distinction of divorces made by the canon law, all sentences of divorce dissolving the bonds of matrimony.

The obedience of children to their parents was severely enforced, for a stubborn and rebellious child was punishable with death. All children were taught to read, catechised, and otherwise instructed in their families, the selectmen being

* Erskine's Scottish Institute, p. 64. Hutchinson, c. 5.

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bound to execute the laws to that effect. But above all, we should notice the circumspection and liberality of the colonists as displayed in their laws for the support of public schools, one of which every town containing fifty householders was bound to maintain. Thus early were laid the foundations of that system of primary education, which, by disseminating a spirit of industry and intelligence through all classes of society, has contributed, perhaps more than any other single cause, to confirm and perpetuate the peculiar character of the inhabitants of New England.

II. The patent of the colonists prescribed that their lands should be holden of the king and his successors as of their 'manor of East Greenwich in Kent in free and common socage, and not in capite nor by knight's service;' which clause in the charter was undoubtedly intended to refer simply to the *tenure* of the lands *as respected the king*, without drawing along with it all the properties of gavelkind-lands in Kent. But happily it was interpreted in a larger sense than the charter strictly warranted; for our ancestors had a great talent for detecting those constructive powers, which our Virginian brethren so zealously deny in the National Constitution; and to this we are to attribute the liberation of the colony from the burden of the feudal tenures. Hence, agreeably to the custom of gavelkind, and in contradiction to the common law, they admitted no forfeiture of estates for felony; nay, they went farther than gavelkind itself; for they suffered traitors, according to Hutchinson, no less than ordinary felons, to devise their lands after sentence; and if a convict died intestate, distribution was made as in other cases.* The rules of descent were very peculiar, entailed estates following the common law, but estates in fee-simple descending to all the children alike, except that the eldest son had a double portion in conformity with the institutions of Moses.†

Two very important variations from the principles of con-

* The maxim of the custom of gavelkind is, 'the father to the bough and the son to the plough.' St Germ. D. and S. c. 10. But this did not apply to treason, which always wrought a forfeiture. Tomlin's Jacobs, v. iii. p. 111 and 178. See also Robinson's Common Law of Kent, p. 227.

† Col. Laws, c. 104; Robinson's Gavelkind, p. 9; Hale's His. Com. Law, c. 11; Deuteronomy, xxi. 17.

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veyancing at the common law, which still subsist among us, were introduced at this time, namely, the requisition of an acknowledgment and registry of deeds, and the permission given to married women to aliene lands. In 1641 it was ordained that no grants, sales or mortgages of land, where the grantor continued in possession, should be in force, except against the grantor and his heirs, unless the same was acknowledged before some magistrate and recorded; and in 1651 another ordinance provided that no alienation of lands should be valid, unless by deed executed with livery and siesin, without acknowledgment and registry of the deed. Previously to these acts, the delivery of a deed was sufficient in the colony to pass real estate, as the English statute of enrolments was held not to extend to this country.*

With respect to the power of wives to join with their husbands in conveyances, there was a special ordinance authorizing a feme covert to bar herself of her dower; but the ordinance did not extend to enabling her to aliene estates held by her in her own right. The usage, however, prevailed in the colony, difficult, as our courts have since declared it is, to ascertain the origin of the usage, or to place its legality on any other ground than that of the common law of New England.†

III. The administration of justice in the colony was conducted with extreme simplicity, and with a disregard of forms, which could not have been borne in a community differently constituted. The judicial power, both in criminal and civil matters, was originally exercised by the court of assistants; but afterwards, when the colony was divided into counties, county-courts were holden in each county, by magistrates or other persons, nominated by the freemen and approved by the general court, to the number of five, any three of whom, a magistrate being one, were a court with power to hear and determine all civil causes, and all criminal causes not extending to life, member, or banishment. High criminal causes, as we have seen, were cognizable only by the magistrates, to whom, also, an appeal lay in civil causes, and from the magistrates to the general court. There were no justices of the peace according to the usual signification of the terms, but the

* Mass. Rep. iv. 544; Ibid. v. 473; Ibid. vi. 26; Col. Laws, c. 28; Hutchinson's His. i. 455.

† Mass. Rep. vii. 2.

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assistants individually exercised most of the functions of justices of the peace. These courts had cognizance of all causes of whatsoever name or nature, whether properly of common law, civil, equitable, or ecclesiastical jurisdiction; and however inadequate such tribunals might be to execute the laws in a less primitive community, they sufficed for the wants of our simple forefathers.*

The judicial proceedings were as summary as could consist with the preservation of any kind of method in the course of law. The parties had a right to take their election of having a trial either by the bench or by a jury. Jurors were chosen by the votes of the freemen. They could ask advice of any person present, if they were not decided in their own minds; and so far were they from being confined to the question at issue in returning a verdict, that, in criminal cases, they sometimes found as their verdict that there was strong reason for suspicion, but not enough for conviction, and the court modified their sentence according to such a verdict. No special pleadings or demurrers were admitted; and no summons, plea, or other process could be abated for any circumstantial errors, provided the cause was rightly understood.

The process in actions was either by summons or capias, at the plaintiff's election, both conceived in the most concise and laconic terms imaginable; and what is worthy of notice, as indicative of the republican temper of the times, no writs, indictments, or other legal proceedings ran in the king's name, or contained the slightest allusion to the authority of the sovereign. The plaintiff might either hold the defendant to bail, or attach his property; and the attachment held good until thirty days after rendition of judgment. If the judgment-creditor could not find goods to satisfy his execution, he might, as we stated in another place, levy it on the body of the debtor, who was then compelled to discharge it by bond-

* The remarks of judge White, in his unpretending but valuable work on the Probate Law of Massachusetts, are applicable to this point. 'Though familiar,' he says, 'with the distinction between the civil and ecclesiastical jurisdiction in England, they were never inclined to introduce it here; nor would the constitution of their churches have admitted it. The leaders among them were wise and practical men, and well understood how to adapt their laws and institutions to the condition of a new and growing settlement, and to vary and extend them, as their experience dictated, without transplanting more from the parent country than was applicable and useful.' p. 9.

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service; so harsh and severe have always been the laws enacted for the collection of debts, even among the most civilized people, and at the most refined ages, of the world.

One thing else under this head may be mentioned, as a very remarkable practice introduced at this time, and handed down to us from our ancestors, although without having been either established or perpetuated by any statutory provision. We allude to the form of swearing by holding up the right hand, instead of kissing the book, or laying the hand upon it, which the scrupulous colonists, in common with the Scottish covenanters, regarded as an idolatrous and superstitious ceremony. No particular form of administering judicial oaths was ever required in England any more than in Massachusetts; but the usage of touching or kissing the evangelists prevailed so universally in the former country, that the books refer to two cases only, one in 1657 and the second in 1745, in which witnesses were permitted to hold up the hand, and which were recorded on account of their singularity. The latter form, however, has such decided advantages over the former, that we have great cause to rejoice in the exchange, as giving us a ceremony which is more simple than the English, more impressive, in far better taste, and much more solemn, in the opinion of so competent a judge as lord Mansfield.*

IV. The criminal laws of the colony remain to be considered; and these we may pass lightly over, since, while they constitute one of the darkest features in the civil polity of our sires, there now continue but few and faint traces of them in the existing codes of the New England states. Regardless of the principle of the common law to which they were pledged to adhere, blind to the situation and emergencies of the country and of the times, alike unmindful of the dictates of reason and the voice of experience, the colonists enacted a system of vindictive and sanguinary penal jurisprudence, which finds a parallel in no code of modern days, and in but one of all the numberless diversified codes of antiquity. Beside most of the crimes

* As to the introduction of the usage in the Colony, see Hutchinson, ch. 5. The cases referred to in the text are that of Dr Owen in Siderfin's Reports, v. ii. p. 6, and of a Covenanter mentioned by lord Mansfield in Cowper's Reports, p. 390. See also Willes' Reports, p. 553; Paley's Philosophy, p. 145; and Tombes on Oaths, l. v. s. 1, for more information on the same subject.

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capitally punished by the common law, our forefathers added, to the gloomy catalogue, idolatry, witchcraft, blasphemy, adultery, man-stealing, cursing, smiting or rebelling against a parent, and heresy,—offences, some of which more enlightened legislators have since expunged from the statute book, while to the rest they have annexed punishments more appropriate to their rank in the scale of criminal enormity. The singular inconsistency of these laws, which, under a regal government, altogether omitted the crime of high treason, and punished heresy with death in a community established for the sole purpose of vindicating the rights of conscience, may be accounted for by the circumstance that the colonists conceived themselves bound to revive and follow implicitly all the peculiarities of the Mosaic institutions. With a fond extravagance in simplicity, which may now excite our amazement, they regarded the laws of Moses, not as the temporary polity of a corner of Asia, which divine revelation had abolished sixteen centuries before, but as the eternal, immutable, and indispensable decrees of God, irrevocably binding upon all succeeding ages and in every clime of the habitable globe.*

The colony-laws specified a great number of lesser offences, which it is unnecessary for us to enumerate, observing only that many of them strikingly indicated that over-zealous desire to exact the observance of minute and trivial things, which has exposed the puritans to so much ridicule from the less scrupulous among their contemporaries and successors. In the kinds of their punishments, too, they displayed little of the spirit of improvement so characteristic of other portions of their ordinances. They transferred to their adopted country the stocks, the pillory, and the whipping-post of their native land; nay, one of their acts authorized the application of torture to discover the accomplices of a convict, provided, subjoined the well-meaning legislators, that the torture be not '*barbarous and inhuman*;' so little progress had at that time been made in the difficult and embarrassing science of penal jurisdiction.

* Col. Laws, c. 18; Hutchinson's His. i. 440. The texts of the Pentateuch are printed against each law in the penal title. Col. Laws, *ut supra*, and Adv. to edit. 1814; Mather's Magnalia, v. 20; Minot's Continuation, i. 24. The original draft reported by Mr Cotton was much more merciless than the above. See Mass. His Col. 1798, p. 182.

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We said that the crime of heresy was punished, in the colony, with death. The remark needs to be qualified and explained. The regulations that church-members alone should be freemen, and that all high offices of trust or honor should be reserved for orthodox congregationalists, would appear, at the present day, to be a sufficiently harsh denunciation of the doubtful crime of heresy. But it seemed far otherwise to our progenitors; for, by the acts against heresy, the opposing of certain dogmas, therein mentioned, and the denial of any of the canonical books of the old or new testament, were punished with fine, whipping, and banishment. In addition to this, all catholic priests and all quakers were banished from the jurisdiction, punishable with death if they returned; and the least intercourse with quakers was forbidden under the heaviest penalties. The injudicious execution of these laws in several instances, while it exposed the conduct of the colonists to such severe examination in England as resulted in the forfeiture of their chartered privileges, and in the formation of a government less independent of the crown, afforded a striking example of the doctrine since laid down by Montesquieu; 'que toute religion réprimée devient elle-même réprimante.' The settlers of Massachusetts did not fly to the deserts of the new world, like Penn and his followers, to found there a commonwealth on the broad basis of universal toleration; but it was to withdraw themselves out of the reach of an oppressive hierarchy, and to admit none to a fellowship of interests with them, who were not impelled by their own stern and inflexible principles; and to such alone did they proffer an asylum from persecution in New England.

If our readers have followed us thus far, they will now be prepared to apply the remarks, which we made in a former part of this article, as to the source of our peculiar laws. And when they advert to the defects in the system of jurisprudence just described, defects, too, so numerous and so radical, we think they will agree with us in the opinion that the social order could not have been preserved entire by means of the colony-laws, if their operation had not been aided by the exalted sense of duty, the unwavering obedience to the dictates of conscience, which elevated and directed the actions of our ancestors.

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All these laws were virtually abrogated by the seizure of the colony-franchises into the hands of the king in 1688, and the grant of a new charter, vesting the appointment of a governor in the king, and making it necessary that all acts of the general court should receive the king's approbation, before they enjoyed the force of statutes. Under this charter the municipal laws of the colony were gradually enlarged, the outlines already traced were filled out into the proper consistency and finished form requisite for the occasions of a populous state, many of the harder features of the original were softened down beneath the influences of a more tolerant spirit, and the whole was assimilated, in substance, to what we now find prevailing under the constitution of Massachusetts.

To attempt the task of continuing the history of our law to the present moment would be greatly exceeding the reasonable limits of a review. It is not our aim to give an abridgment of the statute-book or a digest of the reports. But while upon this subject of the peculiarity of our laws, we would not lose the opportunity of referring, before we conclude, to a work, which, as we conceive, will go far towards creating a new era in our judicial history. We allude to the Digest of American Laws proposed for publication by Mr Dane of Beverly. The name of this gentleman, closely associated, as it is, with the political and constitutional history of our country, has no less distinguished claims to eminence in connexion with our municipal law. In saying this, we do not confine ourselves to the considerations, that his collection of American precedents has been a standard law-classic in this country for twenty years, and that he has devoted the leisure of twice that period to the preparation of his Digest. Mr Dane's title to the respect of the profession rests on still higher grounds. He is one of the few surviving luminaries of that constellation of legal sages, who illustrated the bar and bench of Massachusetts in the periods immediately succeeding the revolution. Who, then, so able to combine and digest the elements of our law as he, beneath whose eye it has grown up into the complete proportions of its present maturity? Who so capable of penetrating and developing its principles, as this venerable monument of those days when there were giants in the land? Who so familiar with the whole theory

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and practice of it, as one, who was not only the coadjutor of the Reads, the Trowbridges, the Cushings, the Danas, the Parsonses, and the Sewalls of the generations that are gone by, but the contemporary likewise of those, who now inherit their fame and rank in the courts of Massachusetts and the union?

Art. V.—1. *Versuch über den politischen Zustand der Vereinigten Staaten von Nord America, &c. von Frederic Schmidt.*

Essay on the political condition of the U. S. of North America, by Frederic Schmidt. First volume, 8vo. Stuttgart and Tübingen. 1822.

2. *Meine Auswanderung nach den Vereinigten Staaten in Nord America, &c.*

My emigration to the U. S. of N. America in the Spring of 1819, *and my return home in the winter of* 1820. By Ludwig Gall. 2 vols. 8vo. Treves. 1822.

Our readers will give us credit for having devoted a fair proportion of our pages to the literature of Germany, and we may appeal to their recollection that we have done ample justice to the value of its language and the intellectual stores deposited in it. A new species of German literature, however, is growing up, for which we cannot promise so much. In our number for July, 1820, we gave a brief account of a specimen of it, 'the German in North America,' of the baron von Fürstenwärther, not at that time foreboding that the noble baron's brief essay was to serve as model for a new class of writers, on our country. It is not often that the progress of improvement is more rapid, than it has been in the baron's school. It may be truly said that the little finger of Mr Frederic Schmidt or of Mr Ludwig Gall is thicker, than the baron von Fürstenwärther's loins. The two works before us will compare advantageously with the happiest efforts of Beaujour or Fearon; and the Germans have so often been the butt of other nations, that it gives us pleasure to see them at last acting vigorously on the offensive, though it happens to be against the nation, which has given them least provocation. It is very far from our intention to enter the lists with either

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of these gentlemen; and our notice of them will be little else than a series of extracts from their works. Scandal of all reading is the most piquant. No articles in the Quarterly or Edinburgh Reviews are read in America with so much relish as those in which our country is most severely taken in hand. And while the works before us certainly possess this interest, one of them at least has the additional recommendation of the zeal of the author to expose himself to ridicule, while he thinks he is belaboring America. Since the exploits of the knight of the rueful countenance, nothing to our knowledge has appeared half so happy in this way. Mr Ludwig Gall is the sternest simpleton we ever met with; and though he occasionally paid dearer than we could wish for his intrepid imbecility, he shakes his fool's cap with such menacing dignity, that we look on with no small awe.

Before proceeding to an account of the works themselves, we may perhaps be excused for noticing very briefly the remarks, in which the first of the authors above named, has seen fit to reply to our review of the baron von Fürstenwärther in our number for July, 1820. We do this the rather, as we suppose they proceed from the baron himself. He first charges us with ignorance, in calling the emigration from South Germany to America in the years 1817–19 'prodigious,' alleging that, for twenty one months, from March 1, 1818, to December 11, 1819, 'there were not more than twenty four hundred emigrants from the provinces of the Rhine, Würtemberg, Baden,' &c. and adding that, 'when we farther consider that this emigration is from the most populous part of Germany, whose superfluity requires a diminution from time to time, it is altogether erroneous to call it 'extraordinary.' *Extraordinary* we did not call it, and we leave Mr Schmidt to ascertain, whether even his twenty four hundred in twenty one months be an usual or an unusual emigration from the south of Germany. We called it, however, 'prodigious,' and shall rather than undertake ourselves to contradict Mr Schmidt, appeal to his countrymen. The baron von Fürstenwärther tells us, that from the 12th of July, 1817, to the early part of 1818, there arrived six thousand German *redemptioners* alone, being for nine months, about three times as many as Mr Schmidt allows for twenty one months. The redemptioners are of course only a part of the

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emigrants. Mr Gall informs us that the emigration continued for a year or two to be equally great. This is only to the United States; but our remark did not confine itself to the emigration to this country. We spoke in general terms of the emigration from the south of Germany. Whether it is 'altogether erroneous' to call that *prodigious*, Mr Gall shall decide. He thus speaks in the beginning of his work.

'How extensive was this apprehension, is established, beyond question, by the fact that, according to the public prints, the stream of emigration, which in the year 1818 had carried nearly *thirty thousand* men by Mentz, down the Rhine, did not appear to have diminished for the first half of the year following;"

at which time Mr Gall himself joined it. He adds, moreover, that this emigration was chiefly from Würtemberg and Switzerland. Whether thirty thousand men from these two countries be a 'prodigious' annual emigration, we leave to the reader. The kingdom of Würtemberg is computed to contain about one million four hundred thousand inhabitants.

But Mr Schmidt will have it that by calling this emigration *prodigious*, we not only betrayed our ignorance of the circumstances of his country, but of our own; 'for,' addeth he, 'no where is the emigration greater than in America.' This we are fain to pronounce a *non sequitur*. We certainly never denied that a 'most prodigious' emigration, to borrow Dominie Sampson's phrase in its full form, is going on from the Atlantic to the western states. It is true we doubt Mr Schmidt's accuracy, in giving the emigration to Missouri in the year 1819 at forty thousand in five months. By the census of 1820, the population of that state was sixty six thousand five hundred and eighty six, and as it was estimated at sixty thousand in 1818, one can hardly go along with our author, in allowing that in five months of 1819, it received an accession of forty thousand. This heedless exaggeration will serve as a good specimen of our author's statistics. Whether the emigration, however, to the western states be great or small, we certainly gave our author no reason to argue that we were unacquainted with it.

It was not, however, this that he probably meant to urge. He has not himself succeeded in stating his argument; and we will do it for him. We inferred from the mighty emigration from the south of Germany, that things must there be in

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a very bad state. Mr Schmidt meant, we suppose, to reply, that, on this principle, things must be in a very bad situation, in the Atlantic states of America, because a still greater emigration takes place from them to the west. In this form, had he so stated it, his argument would have been ingenious and plausible; but still groundless. The cases are very different. The poor German redemptioner, wanders away from his country, against the will of his sovereign, and at the sacrifice of his citizenship, encounters the hardships of the passage, which Mr Gall paints in much such colors as those in which the middle passage of slave ships is usually represented, submits to three or four years' servitude, as the price of his passage alone, and endures all the hardships unavoidably incident to a poor foreigner in a strange land, where manners, language, laws, and government differ so entirely from his own. This is a very different case from that of the enterprising young farmer, who crosses the mountains, with an axe on his shoulder and fifty dollars in his pocket, to a region, which he scarcely calls distant, for he finds in it his own language, his countrymen, and the government under which he has always lived.

In the close of his remarks on America, the baron von Fürstenwärther thus expressed himself in a passage, which we cited from his work.

'With such advantages, on the part of the United States, which every impartial man will recognise with me, and with all the facility, particularly *of the material life*, I cannot conceal some defects and dark sides. In this country there is no idea, nay not a distant suspicion, of a high and finer existence, at least on this earth,' &c.

By 'material life' we supposed the baron to mean all those things, which belong to the physical rather than the moral and intellectual man, and we observed that all that is comprehended under it, seemed to us to abound in those parts of Germany, out of which the tide of emigration sets most strongly; and that accordingly this emigration must have its origin in moral and political causes, as it certainly does. Though we laid no stress on this fine phrase of *material life*, Mr Schmidt appears to have been a good deal aggrieved at our interpretation of it, and expresses himself as follows:

'By material life, which the reviewer, as it seems, did not understand, is meant, in Germany, neither roads, nor plantations,

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nor agriculture, nor fine forests; but it expresses the prevailing inclination of single persons and whole nations, to satisfy their physical wants and regard their belly as their god. According to the reviewer's notion, the whole world would belong to the material life. It is matter of astonishment, therefore, that the reviewer should have learned so little on the German soil, that he could not even carry home with him this idea. When we speak then of *material life*, we understand by it a prevailing effort after eating and drinking, and the possession of superfluous goods. We understand by it men, who take more pleasure in a cattle show, or a breed of swine, than a Venus de' Medici or a Laocoon. Will the reviewer have an example of an actually personified material life, he may imagine to himself an American physician in one of the most public streets of Philadelphia in a Norwegian cold of five below zero, carrying home a whole quarter of pork, coughing as he goes, and gloating with wishful eye on the meat, which has now become his idol.'

Upon these assertions of our author, and his pertinent illustration, arise two questions, one of fact and the other of principle. In point of fact, we would ask—did we mistake Mr von Fürstenwärther in the interpretation we put on his phrase? Nay, does not our author, in the main, mean the same thing? What does he make his material life to be, but fondness for eating, desire for superfluities, taste for cattle shows, and the breed of pigs, and especially, the carrying home from market, in a cold day, of a quarter of pork? We assure the abstemious Mr Schmidt, that, though we did not illustrate the phrase so amply, we understood it precisely as he appears to do. He says that the Germans do not include good roads, agriculture, and forests in the material life; but do include cattle shows and breeding swine. But we would ask this nice discriminator, how he is to fatten his cattle without agriculture; and so far from the breed of swine being unconnected with forests, the Westphalia hams of his own country are said to owe their admirable savor, to roaming through the woods and to the quality of the smoke of the juniper tree, in which they are cured. With regard to the unfortunate Philadelphia physician, surprised by our author in carrying home a quarter of pork, we cannot but exclaim in the words of Mr Southey:

> 'Jacob, I do not like to see thy nose
> Turned up in scornful curve at yonder pig.'

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If our author be not a Jew, we presume he will not find any particular materialism in eating pork, even when the thermometer is at five below zero; and as for bringing it home from market, we wish we may never meet a doctor with any thing more dangerous about him than a few pounds of pork. If by all this eloquent explanation of material life, Mr Schmidt means to say that the Americans are very curious in the quality, and gluttonous in the quantity of food, we shall take the liberty to differ from him. More *meat*, pork as well as other kinds, it is true, is eaten here than perhaps in any other country; but the English eat more on the whole, and the Germans much more, than the Americans; and as for cooking, there is no place in the world, where that noble art has been less cultivated than in these United States. At any rate, did we think it wholly delicate, we could give the author a match for his Philadelphia doctor, which would teach him, as a German, the prudence of not saying much on this part of *material life*.

The other question regards the real dignity and importance of this material life, on Mr Schmidt's own explanation. It will be remembered that the topic under discussion was the temptation, which the United States hold out to emigrants from Germany. And the question is, how far, in this connexion, it is a reproach to a country that good eating abounds in it, and that the people indulge therein. For our own parts, we see nothing opprobrious in this. It is very easy to make speeches about material life—and preferring a show of cattle to a Venus de' Medici; but is there any thing really contemptible in the business of eating? To sift the matter closely, which would one choose for his standing dish, a Laocoon without meat, or meat without a Laocoon? Pray what is there mean, in the nourishment of our wonderful bodily organization, by the appointed mode? Does the philosopher find any thing unworthy, in the subject of that mystery of assimilation, by which foreign *matter* is united with our frames? Does the statesman look with disdain on the great topic of the sustenance of millions? Does the student of the fine arts, the true student of beauty and grace, really despise the consideration of the manner, in which the various lifeless particles, are transformed into living and sensitive forms? To take our author's own example of the cattle shows, is not a noble bullock, such as may sometimes be seen at our cattle shows,

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whose iron neck and compact frame are clothed with an almost silky fur, whose beautiful shape seems the very compound of symmetry and strength, and whose fine appearance is the least of his recommendations; is not such an animal, in any rational, philosophical, or moral point of view, as worthy an object of curiosity as the statue of the courtezan Phryne idealized—forsooth—as the Venus de' Medici? Nay, we go farther, and maintain, that if our author had ever seen one fine pig of the Bakewell breed, he would pronounce a milder judgment on his poor Philadelphia doctor. Or, if he had ever contemplated that gaunt, voracious animal, the common hog, with high back, long legs, and appalling maw, and reflected how much of the substance of the land such a breed consumes, and how poorly, after all, they cut to pork, he would not have sneered at the exertions of the immortal Bakewell. We pronounce, without scruple, that more has been done for human happiness, by the introduction of this small-boned and kindly fattening breed of swine, than by the publication of Winckelmann's history of the ancient arts; and before our author speaks so disrespectfully again of such a sweet-fleshed animal, we will thank him to remember that it was a litter of pigs, which guided Æneas to the foundations of the imperial city:

Tantæ molis erat Romanam condere gentem.

How much that classical nation of Romans—the very people, into whose possession the Laocoon and Venus were cast—suffered for the want of cattle shows, may be seen in the miserable resort of Romulus and Remus for milk; a thing that never could have taken place, had the breed of Fill-pail existed among them.

Mr Schmidt closes his reply to us with some general and pretty angry remarks on the subject of 'freedom, confidence, and equality of rights,' which we implied to belong to America, and intimated to be wanting in Germany. We did, however, but quote, in a different form, a part of Mr von Fürstenwärther's words, even in his most tragical exclamation over us. 'If,' says he, 'the Americans are justly proud of their civil freedom, and of their freedom in thinking, speaking, and printing, and in the social life, they still know not that higher freedom of the soul, which is to be found only in Europe, and, I say it

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boldly, most abundantly in Germany.' To this charge, if it be this which Mr Schmidt would reiterate, we plead guilty. If there be any freedom higher and better than that of 'social life, of speaking, printing, and *thinking*,' we are content with the latter, and resign the former without a murmur, satisfied with what Tacitus calls the rare felicity of the times, ubi sentire quæ velis et quæ sentias dicere licet.

Mr Schmidt argues that the slavery, which prevails in the southern states, the buying and selling of men in open market, is inconsistent with freedom. We certainly have no call to defend the institution of domestic slavery, but, if it deprive America of the right to be called free, what becomes of Greece and Rome. Were not the Spartans free? Were not the Athenians free? Was old Cato a foe to freedom? Were Brutus and Cassius foes to freedom: and yet they had slaves, chained by the neck to the door-posts of their houses; countrymen, very likely, of Mr Schmidt, for your Roman lord placed an especial value on a transrhenane slave. That very Apollo and that Venus, the mere admiration of which, according to Mr Schmidt, proves a man to possess the finer freedom of the soul, were hewn for the greater part by slaves: if made in Rome, as some think, wholly by slaves. 'The Würtembergers were free,' says Mr Schmidt, 'at a time when bears and elks roamed upon the coasts of America.' We strongly suspect that, at the time the bears and elks were in possession of the coasts of America, the Würtembergers, so far from being free, were attached to the soil, and 'bought and sold in public market' with it. *Leibeigenschaft* (a word, for which there is no familiar English term, but which bears in our ancient laws the ominous name of villanage) was the particular form of freedom, which the Würtemburgers, in common with their brethren in the other parts of Germany enjoyed, till a very late period. This '*Leibeigenschaft*, or *bodily property*, is' (says Hegewisch, a well known respectable German writer, and the latest on this subject) 'essentially identical with slavery, inasmuch as the Leibeigner, like the slave, is the property of his master; and the right of property of the master in the person of his slave is only a little less restrained than in the case of a Leibeigner.' This slavery, we believe, still exists in some parts of Germany. The king of Prussia abrogated it in 1739. In 1781 it ceased in Bohemia and Moravia, in 1783 in Baden. When, if ever,

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it was formally abolished in Würtemberg, we know not; probably in the late new constitution. So much for the freedom possessed by Würtemberg, or by Germany, at the time when America was possessed by the bears.

But we have dwelt much longer than we intended, on Mr Schmidt's reply to our observations. It is no part of our present or former design to enter into an encounter of wits, for the sake of villifying Germany or the Germans. We stated, in no offensive terms, what every body knows, and what we could bring a plenty of German writers to avouch, that the emigration from that country is caused by the unfavorable political and social condition of its lower orders. If Mr Schmidt is disposed to quarrel with us for this, he must first dispose of Mr Gall, and of nearly all the literati in his own country, who have expressed any opinion on the subject.

Mr Schmidt's work, of which the first volume only has appeared, is to consist of three volumes, in two parts, one treating the political and one the moral condition of America. The following sentences, from the preface, will afford a good idea of the spirit, with which he goes to work:

'America, the land which has been sung in strains of enthusiasm, is an old man in the cradle, a dead hull of nominal freedom; the youthful confederation has sunk into a moral nihility, and suffers the pains of extreme age. Could Washington arise again from the bosom of the earth, he would regard, with horror, the work of his hands destroyed by his posterity with impious scorn. But here, as in other lands, there are upright men, who might boldly place themselves by the side of the honorable of other nations; but they are widely scattered and cannot thrive on the meagre soil.'

The mass of the book is a heavy geographical and statistical compilation from ordinary sources, and contains little, which appears to be the result of personal observation. It is amusing to see the contradiction, on several points even of fact, between Mr Schmidt and Mr Gall, whose works appear at the same time, in the same region, and with the same general object. Thus Mr Schmidt is very sure that the climate of the valley of the Mississippi is identical, in the same parallels, with that of the Atlantic coast, and establishes the fact by all sorts of proof. Mr Gall is equally sure that there is a considerable difference, and proves it to equal satisfaction. It is

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worth while to compare the accounts of these two valuable writers, on a point so simple as this.—'It is therefore clearly proved,' says Mr Schmidt, that no difference of temperature exists between the eastern and western states, and that this opinion must have had its origin in local phenomena, which ought never to lead to general conclusions.' p. 62.—'Hence arises,' says Mr Gall, 'the greater heat of the country west of the mountains, increasing as you approach the Mississippi, on whose banks the difference in the same parallels amounts to three degrees.'

Nothing enables readers to bring the accuracy of a writer to the test, more directly, than observations which relate to their own immediate neighborhood. We accordingly quote the following passages, to show to what advantage the Bostonians figure in Mr Schmidt's trust-worthy chapters.

'Boston, at that time the Heligoland of America, had become the depôt of the United States. Favored by the English navy, and engaged in a rebellion against the government of their country, which made but a feeble defence of their rights, *they pursued their commerce at sea as usual.* The consequence was, that necessaries and goods rose in all other states just in proportion as they were distant from New England, and that all orders must be sent thither, of which payment in specie was required. The demand for specie was therefore so great, that the banks were not in a condition to satisfy it. Accordingly in August and September 1814, there took place an universal suspension of specie payments, on the part of the banks of the United States, with the exception of those of New England, which best managed to sustain themselves.'

The following instructive and temperate passage follows some quixotic statements, on the subject of banks.

'Now I ask whether, in any part of the world, such diabolical extortions are permitted? Does it not cry to heaven, that the government of the United States permits such oppression of the people? And does that deserve the name of a government, which permits the welfare of the nation to be undermined, before its eyes? The banks of the United States exhibit all the qualities of fraudulent monopolies: they stop payment whenever they please; pay in silver if expedient, and if not, in lead. They are banks for discount and circulation, and a merchant engaged in extensive business takes good care not to commit treason against them: for their teeth are like a lion's and destroy

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mankind. Whatever most revolting has occurred in Europe, in this age of paper money, is child's play, compared with these events, which deserve to be treated in detail, by some one competent to the topic: [Mr Schmidt, for instance, who, as our readers see, is competent to any thing.] It would unquestionably be the most important illustration of unbridled avarice, originating in the dregs of a nation of traders, and would especially convince the world of the great truth—that arbitrary power and oppression, under other forms, exist in a far greater degree in America, than in the so much calumniated ancient world; for in America a man marches into jail for a dollar, or is gradually destroyed by banks and brokers, counterfeiters and swindlers.

'Why the government of the United States, as well as that of the several states, are so little disposed to put a stop to these abuses, appears from the fact that the banks and the government are 'hand and glove' in the business. The former are the favorite children of the presidents and the congresses, of the governors and treasurers of the states, because they are the greatest stockholders in the banks. By this means (?) an indirect taxation of the country is effected beyond all taxes hitherto known. Hence it happened also that five out of twenty-five of the directors of the state bank were chosen by the government in order to secure them more effectually.'

In a note, our sapient author intimates that the only banks of any utility are those on the plan of the bank of Hamburgh! If it were not labor lost to point out contradictions, on the part of such a writer as this, one might ask, how is it possible that frauds, so great and glaring as those which he describes, should be practised among a people so shrewd, keen, and wakeful as the Americans are represented, by our author? A hundred passages might be quoted from his book to prove, that money-getting is the sole employment and thought of Americans of all ages and professions. He has no where intimated that, in this pursuit, they are simple, credulous, or blind to their interest; but, on the contrary, he and Mr Gall both depict us, not only with harpy claws, but with a hawk's eye, and a vulture's scent,—and this throughout the country, of which they saw but a small part. Now, under these circumstances, though all, it seems, are willing enough to defraud, who is it, that is so entirely resigned to being defrauded? A distinguished English authority indeed says,

> Doubtless the pleasure is as great
> Of being cheated, as to cheat:

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but whether that particular form of being cheated, which consists in being ruined by 'banks, brokers, counterfeiters, and swindlers,' be a pleasure of the highest order, may admit of doubt. At any rate, if it be one, it certainly is not the pleasure of the keen money-maker; and if the Americans are so extremely *gullible*, on this score, as our author represents them, he really ought to abate a little of his charge of keen and merciless attachment to money-making.

We will give another translation from Mr Schmidt, not that his opinions, on either subject, are worth confutation, but to show how grossly he contradicts himself. In a paragraph quoted above, our readers have observed, that he alleges Boston to have been a *depôt* of English goods in the war; to have, by the aid of the English navy, kept up its foreign trade as usual, and thus to have forced the whole United States to come to Boston, with specie, to buy the necessaries of life (Bedürfnisse und Güter). Now hear this same gentleman;

'During the war, this importation [of English woollens] for the most part ceased, and so great was the want of them, that many of the troops, stationed in Canada, died for want of clothing. The government, in consequence, in their embarrassment, are supposed to have ordered the seizure of Amelia island, principally for the sake of furnishing blankets for the half-frozen troops.'

Could then the American Heligoland, carrying on its usual commerce under the protection of the English navy, thus made a *depôt* of dry goods for the United States, draining their specie and breaking their banks, could it not furnish blankets for the army? But even this is not enough for our author's digestion. After first telling us that Boston was, during the war, the great magazine of the country, and that the Bostonian commerce, convoyed by the British navy, laid all America under contribution, and after having, notwithstanding, added that not a blanket was to be had for love or money, he again tells us, in the same chapter, 'that all the necessaries of life, during the war, commanded good prices, and employments multiplied to such a degree, that the internal trade alone was sufficient to keep the population in full activity, *and every member of the great family in good subsistence.*'

Of the general remarks of this author on commerce, manufactures, &c. it is sufficient to say, that he has merely copied

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the statements of the publications of the day. That he even understands the principles which he defends, does not appear; that his defence is of any value if he does, no one will imagine from what we have already quoted. Into the discussion of the question between the importers and manufacturers, we certainly shall not enter on this occasion, nor treat the important subject with so much disrespect, as to trouble ourselves with these flimsy compilations *pro* or *con*.

We accordingly proceed to the work of Mr Ludwig Gall. We ought to treat him with some indulgence, in consideration of the little mercy he has shown himself. So simple a man as Mr Gall, we are sure could have no enemies; otherwise, instead of the following motto, in a curious language which he often quotes, but which we do not understand,

> That what is base aware
> No polish can make sterling,

he should have taken the words of Job, 'O that mine adversary had written a book.' Did all authors treat themselves as Mr Gall has done, the business of reviewing books might stop, and that of writing them too, for the art of printing would soon drop into disrepute. Every man, woman, and child, whom Mr Gall approaches, defrauds him. The government of his country, the Prussian, treats him with disdain; the chosen friends, who joined his society, fall off; the Swiss confederates play upon his credulity in the most unheard-of manner; his company of fellow emigrants rebel against him, and require to be brought to their senses at the mouth of the loaded cannon on deck, and that, after one of them had made an attempt to throw him overboard. Arrived in New York, not only does every American cheat him—that is a matter of course—but his own countrymen, the German societies, straightway fall under his displeasure. The worthy and Rev. Mr Hellmuth, recommended by baron von Fürstenwärther as a suitable person, to whom the societies in Germany for the encouragement of emigrants, should address themselves, receives some very left-handed compliments from our author. A young Hamburgher, whom he took into his service in New York, and whose debts he paid, cheats him, insults him, and leaves him in Philadelphia. Several passengers, whose passages he had paid on condition of their service in America, run away from

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him by the time he is cleverly landed; and a few servants that remained faithful, the very Abdiels of his rebel redemptioners, drop off, one by one, on the way from Philadelphia to Harrisburg. Scarcely is he arrived there, when his last and only remaining redemptioner informs him coolly that, by the custom of this country, he shall leave him, unless permitted to sit down with him at table; and finally at the close of his pilgrimage here, when he had printed a small pamphlet of advice to the Germans, his bookseller at Harrisburg, a German, and, as Mr Gall tells us, one of the best men in the world, breaks his contract and cheats him. The truth is, there is some pleasure in cheating a man like Mr Gall. There is such a readiness, a hearty, unsuspecting ignorance about him, an Olympian self-conceit, in which he thinks he knows all things, a promptness in drawing out his purse to pay, and, when it is too late to help it, such a sagacity in discovering the deception, and such a hoarse stentorian shout after the thief, that we have rarely conceived, in so lively a manner, the pleasure of imposing on the credulity of others. One remark, however, we must be permitted to make before proceeding to a farther account of Mr Gall's book. As we have observed, every body cheats him; and he is pretty clear and full in setting it down, but with this difference: when done by his countrymen at home, by the Swiss or the Antwerpers, it draws forth no general inference against their several countries. On the contrary, his anecdotes of the truly flagitious frauds, which seem to have been practised on him by the German Swiss, with whom he was engaged, are accompanied with epithets highly to the commendation of his *dear* countrymen, whom he compliments with *gradsinnig*, and every other fondling term, which a man can bestow on his grown-up neighbors. When he arrives in America, however, and, in the low company into which he falls, is in various ways imposed upon, each new instance is announced with solemnity, as characteristic of the people. If the owner of a miserable Irish hovel, in which he takes refuge in New Jersey, overcharge him, or the driver of a set of farm wagons, in which our exquisite traveller seeks conveyance, take advantage of his simplicity; it is a proof that the Americans are a trickish set; and where the knaveries in question happen to be practised by his own countrymen in America, then his ingenious inference is, that the American air has corrupted them.

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But we will lay before our readers a short account of Mr Gall and his work. This gentleman was a clerk in some department of the Prussian government, in the Rhenish provinces; and rapt into enthusiasm by the eloquence of the baron von Fürstenwärther and his brother-in-law von Gagern, determined to resign his office and devote himself to the cause of the German emigrants. To this end he and seven of his friends undertook, at Treves, his home, to form a society for the aid of poor emigrants, in leaving Europe and settling in America. It was proposed to call it the Gagnerian Society, Mr von Gagern having delicately volunteered to allow all associations for this object to bear his name. The thing had by this time reached the point, where the paternal governments of Europe generally interfere. Our philanthropists were given to understand that the ministry at Berlin did not thank them for their pains, and many, as our author pathetically remarks, who were well disposed to the association before, in consequence of hints to this effect, kept aloof. A society had at this same time, viz. the end of 1818, been formed at Bern in Switzerland, with a view of founding a German colony in North America; and a friend and associate of Mr Gall immediately wrote to the Swiss brethren proposing to make a common cause with them. The offer was promptly accepted, and Mr Gall and his friend were informed that a company had been constituted, and shares taken by wealthy and respectable people at Bern, to promote this great end of founding a settlement in North America. Soon after, our author himself wrote to Bern, with an offer, which was thankfully accepted, to subscribe for twenty or thirty shares of the colony stock and join the party, as one of the commissioners for selecting a site. All this time he was unacquainted with the persons, characters, and designs of his Swiss confederates, and knew them only from their own advertisement in the newspapers; evincing the same sort of discernment as would be shown in common life, by running after 'the fine chances to invest capital,' the 'respectable single gentlemen with easy fortunes, that seek a partner for life,' and other tempting proposals, which are daily wasted on a shrewd community.

No sooner was this considerate union with his Swiss formed, than Mr Gall took his great step, the publication of 'his call for the formation of benevolent societies in one of the

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most important affairs of the age and of humanity.' This call was published at Treves, January 23, 1819, and our author seems to consider it as his passing of the Rubicon. He immediately communicated it to the fraternity at Bern, and received the following answer, which will throw some light on the character of these gentry.

'*Bern, February* 6, 1819.

'I have now to answer your letter of the 25th of January, which I had communicated to some of the most important partners in the concern. Captain St—— von H—— writes to the house of Maudrot and Opermann in Havre, and informs them that you will send your effects thither, addressed to them; at the same time, he lays before them some questions, which regard our undertaking.

'The departure hence will take place about the first of April. There is no question of finding ships ready to sail at Havre. The port at which to land, connot so well be settled here. As we are to consult Mr *von* Gallatin the American *ambassador* at Paris, several points will be afterwards better settled than now; and I acccordingly forbear to answer this question. Here, without counting your shares, four hundred and twenty are subscribed for, and a considerable number will shortly be added. The ambassador Mr von Gallatin is a native of Geneva, and has a very important influence in the American government. In order to give the affair still greater weight, *Mr von Wasseroth von Bincy* has been named a director.'

On the 4th of March, our prudent author bethought him of applying for the royal sanction of a society to promote his great object, and received the following pretty pointed answer.

'To your letter of the 4th, directed to the president of this board, we reply, that we cannot permit the existence in this place of a *Gagnerian* society, so called, as, in conformity with the well known provisions of the law, no society for public objects can receive a statutory formation without the particular consent of the king.

'You, in particular, having been dismissed from the duties of a servant and subject of the king, have no right to erect such societies in this place, or to engage in other public transactions of the kind. On the contrary, you are regarded by the laws precisely in the light of an alien, and have to govern yourself accordingly.'

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Thus the business of societies was effectually checked, and about the same time Mr Gall, to his no small astonishment, received a letter from the 'captain —g— von —d—' at Bern, informing him, that, notwithstanding what had already been written to him about sending his effects to Havre, they had not yet fixed on that port for embarcation, and asking Mr Gall some questions about Antwerp. Here we must apologize to our readers for the singular notation, which we are compelled to employ in recording some of the heroes of this tale. It is Mr A. and Herr von B. and captain C—— von D. and so on, through the alphabet; a sort of revised edition of A apple pie, B bit it. Though, from Mr Gall's account, he found a good deal more of the *B bit it* than of the *A apple pie*. Mr Gall in replying to the letter of this most alphabetical captain —g— von —d— 'did not disguise his vexation at the indiscretion with which Mr N. had written to him from Bern, and occasioned him to send his effects to Havre, while neither the time of departure nor the place of embarcation was fixed on.' Mr Gall also wrote to the said Mr N. 'to recommend to him more circumspection and foresight.' Circumspection and foresight recommended by Mr Gall, who, in consequence of being told that a letter had been written to Havre, by people whom he knew neither personally nor by reputation, sent his baggage down from Treves to Havre on the way to America, in the month of February, to embark in April! Circumspect Mr Gall! Mr N's answer to these edifying letters consisted in telling Mr Gall, that the stockholders would meet on the 16th of March, to determine what to do, and on the 18th of March, he was informed that the meeting had been held, that he himself, with Mr L—— of Geneva and Mr N. of Bern, were named commissioners, and that the *commission* would meet at the latest by *the end of April, in Antwerp*. Mr Gall having six weeks before sent down his baggage to embark from Havre the 1st of April, was probably by this time a little short of various articles of dress, which shall be nameless.

At length Mr Gall thought it necessary to be in motion, and the following extract from his journal, whatever credit it may do to his sensibility, will not serve to give a very high notion of his qualifications for the undertaking, in which he voluntarily engaged. He should never have resigned his clerkship, nor ventured out into the bustle of life.

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'*On the Moselle, April* 6, 1818.

'The journey to the port of embarcation admits of no longer delay. For the first time, I was overwhelmed at the thought of the approaching separation from all that was dear to me on earth, from my native land, from the beloved companions of my early years, from so many good, excellent, rare men; and then the gloomy probability of never, never seeing them again. "Farewell, then, forever!" wrote me a beloved kindred spirit, by whose side I had dreamed away the fairest, happiest dream of my life, and "forever" long echoed hoarsely in my inmost soul. All this awakened gloomy feelings, and I will not conceal, that, in this state of mind, I would have turned back, had not my "call," of January 23d lifted itself as a fearful wall of partition between me and Europe. [Who could fear for the balance of power, with Europe on one side of the wall, and Mr Gall upon the other?] The nearer the hour of departure came, the busier was my fancy in calling up, before my soul, a train of glorious images, with which a world of paradisiacal recollections was associated. How did a thousand things, to which I was indifferent before, now attract me, and with what childlike melancholy, did I dwell on every thing, which I was to leave behind! I was obliged to summon all my powers in order not to yield.

'Not so my wife, nineteen years of age, whom no prayers, no promises, no tears of the tenderly solicitous and inconsolable parents, could persuade to allow me to make the first voyage of investigation alone. Still and reserved, she had already made herself familiar with the pang of separation; and thus, though she had never before left the neighbourhood of her parents, was enabled, in the most solemn moment of departure, with the resignation of a devotee to tear herself from the arms of the best of mothers and of the kindest brethren and sisters, who clung fondly around her and would not let her go. We departed. To avoid bidding adieu to our acquaintances, we sought the remotest streets of Treves, on our way out of the city, accompanied by my brother alone. What a struggle did it cost him to repress the violence of his feelings, in order not to embitter the last moment! But in vain; for, as he caught a glimpse of my cabriolet, which had been sent forward, he could no longer con tain himself. I also was obliged to give vent to my swelling heart. But my wife had not yet lost her calm self-possession. But we were now driving away through a region, where every tree, every bush, every spot had become interesting to her, where every path reminded her again of all the dear ones left behind, with whom she had a thousand times traversed this beautiful valley, engrossed by the most cheerful and joyful

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sensations. To day every thing wore the sombre tint of her increasing melancholy, and every thing seemed to nod to us a last, an eternal farewell. As yet she had only breathed more heavily; but when, at length, the highest towers and spires of the city, the last common objects between ourselves and those dear to us, vanished in the blue mist, then she sought in vain to suppress a moist pearl in her eye. Grief overpowered her constancy, and the long repressed tears now flowed without measure.

'The moon lighted us as cheerfully on to Lieser, as if it had known nothing of our departure. Here an opportunity offered itself, which I gladly embraced, of pursuing our journey as far as Cologne in a Moselle bark. In the house of her sister at Lieser, every thing served to renew the melancholy, which my wife had yesterday experienced. On this harpsichord, she had often played her favorite tunes to her listening mother. That sparkling glass goblet, with a sun upon it, and the inscription "may it illuminate thy life," was never filled, but with the aromatic vintage of 1811 for her father. There the bower was her father's favorite resort, and this rose had been planted with her own hand, to please him. And now again the horror of an everlasting separation, from a dear sister! Who could support this trial! She was beside herself, and my heart bled, when I considered myself as the destroyer of her happiness, and yet could not return.

'The sun was just sinking in full splendor beneath the lofty ruins of the tower of Bernkastel, and gilded the tops of the opposite mountains. Gently beat the oars of the little boat which was taking us to our bark, and the melting note of a solitary nightingale, penetrating to the inmost soul, would interrupt at intervals, the holy calm that surrounded us. In an hour we rowed to our vessel, and before we had passed the beautiful and romantic Trarbach, the talkative spouse of our captain, an obliging, cheerful dame, succeeded, in conjunction with the mild influences of a noble morning, in restoring my wife to her spirits.

'As we leisurely followed the stream in its meandering course, we enjoyed the delightful variety of its picturesque banks. Rough and woody mountains constantly interchange with sunny vineyards. Here and there discloses itself a happy vale with cheerful dwellings, contrasting strangely, but not unpleasantly, with stupendous ruins that arise in mournful pomp from their precipitous rocks aloft into the clouds. Little cities, prosperous villages, beautiful country seats, gardens, meadows, fields, and orchards appear at every glance; but nature still lay in her wintry slumber, and allowed us only to fancy the ravishing beauty of her awaking!'

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We have made this long extract, because it is one of the most amiable passages in Mr Gall's book. It shows, to be sure, a character ill calculated for any active duty, if a mere voyage of investigation across the sea, from which he was to return in eighteen months, had such an effect upon his nerves.

On his journey down the Rhine, Mr Gall stopped at Neuwied, the capital of a small principality of which the prince has made himself known, by a scientific voyage to Brazil, of which he has published the journal. The following anecdote will help to account for the emigration which takes place from Germany. We should like to know what sort of freedom the baron Fürstenwärther and Mr Schmidt esteem that, to which this little extract bears witness.

'I visited in Neuwied,' says Mr Gall, 'the mother of the poet Borkholder, who, in the year 1814, had been banished out of Nassau for writing the following couplet;

> "Scarce can a branch of labor thrive; the tax-
> Man comes and says, good sir, I'll go you snacks."

Having taken refuge on the left bank of the Rhine, he found subsistence and protection under Gruner's administration. In 1815 he was, however, dismissed again, in consequence of having bestowed a box on the ear upon one of his colleagues, who had been advanced above him, and who had, in consequence of some insult, challenged him. The next year he had emigrated to America, trusting more to his trade—he was a cabinet-maker—than his pen. I had known him well. With a clear head he united the best of hearts,' &c.

At Dusseldorf our author received information, with regard to the unfortunate emigrants, who, three years before, had left Germany for Holland, without any mode of supporting themselves in the Dutch ports, and finding no means of procuring a passage for America, were obliged, under circumstances of the extremest misery, to return.

'Many, unwilling to admit the necessity of returning, remained still in the neighborhood of the Dutch cities till the approach of winter. At last, violently undeceived, they set out on their return. Half-starved, covered with rags filled with vermin, and from the total prostration and wasting of strength scarce able to creep on, they arrived in the neighborhood of Dusseldorf. And yet it was out of the question to afford the most miserable any repose, for it was necessary to hurry them forward, to make room for those that followed. Those, who could not march,

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were sent on in wagons. Almost every family had lost one of its members. An unhappy father of seven children, of whom the oldest was scarce twelve years, had become insane at the loss of his wife. "I want nothing," was his constant cry, in his delirium, "I want nothing, but a little bread for my poor children. One loaf, yes, *one* loaf, I have only earned *one;* but the poor worms cannot get their fill of that, and leave some for me to eat and be strong enough to work tomorrow for another.—See! look there! Three big, big dogs! See how they eat! O how they eat their fill! O God! God! let my poor children only eat their fill once! Shall we go to America? Oh yes, to America: there, there is plenty of land—all belongs to God—there I shall have a great, great field—and there we'll raise the corn and potatoes, and eat as much as we want!" '

Mr Gall exclaims with justice on this pathetic scene, 'what a frightful reality is contained in the ravings of this maniac. *One* loaf of bread—the purchase of a day's wages—for a father and seven children. A frank is the usual day's wages [twenty cents]. This commonly must support three, but often also five and six must live upon it.'—What sort of freedom is this, in the estimation of the noble and worthy vilifiers of America? Which spectacle does Mr Schmidt think most to the disgrace and infamy of a country, that of his Philadelphia doctor and the leg of pork, or that of the poor German emigrant, without the gates of Dusseldorf, maddening with envy at the rich meal of the dogs in the streets?

The 24th of April Mr Gall arrived in Antwerp, took up his abode at the hotel Pot-d'étain, *Tin-pot hotel*, and found letters from the precious captain St—— von G—— announcing that one hundred and seventy persons, from different parts of Switzerland, would be at Antwerp by the end of April, and directing Mr Gall, in behalf of the company, to charter vessels, engage passages, and lay in provisions for the voyage. An agreement was accordingly made with captain Kurz of the American ship Columbia of two hundred and fifty tons, half freighted, the captain consenting to give up to the emigrants the other half, for a sum of nine thousand franks ($1800), with the provision that for every passenger short of sixty, one hundred and fifty franks should be abated, but in no case so as to make the whole sum less than seven thousand franks. The captain also agreed to wait till the 10th of May,—after that a daily fine for detention of one hundred and forty franks

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was to be paid. Moreover, as this vessel would accommodate a portion only of the party, another ship, the Eugenie, a French vessel of two hundred and forty tons, was chartered for seventeen thousand franks, to make the passage to America. Mr Gall, in the warmth of his enthusiasm for the vessel which brought him to America, has attached a lithographic print of her to his work; and poorer craft we never wish to see afloat. Mr Gall, not content with chartering these vessels, also went the length of entering into contracts for the supply of the provisions of the party, and became personally responsible to a large amount, and all on the faith of the Swiss gentry, whom he had never seen. How well they deserved this of him, we shall presently see. The 29th of April arrived, and nothing was seen or heard of them by Mr Gall.—Meantime a new event took place, which we relate, to show our readers with how much justice Mr Gall quotes the accidents which befel him in America, as proofs of the superior knavery of the lower class in this country.

On the 6th of May, he received an anonymous billet, informing him that the Eugenie, which he had chartered, was an unseaworthy and unsound vessel, and referring him for confirmation to one of the first magistrates in Antwerp. This worthy magistrate, on being applied to by Mr Gall, stated that he would not himself, for a hundred thousand florins, embark in the ship, and yet, as she was not perhaps technically unseaworthy, advised him to seek a compromise with her captain, and take another vessel; recommending to him the Prussian ship Emma. Full of these new views, and without pausing a moment to weigh the matter, Mr Gall ran to the captain of the Emma. The captain of the Eugenie consented to relinquish his contract for four thousand franks; but before any conclusion was made, Mr Gall happened to find out that he had been the subject of the following knave's trick. A company of separatists from Würtemberg, to the number of three hundred, had sent four of their spiritual heads to Antwerp, to engage a vessel for their transport to America. These leaders had employed the magistrate just alluded to, to pro cure them a ship, and the magistrate engaged the Emma. When the Würtembergers arrived, however, they refused to take the Emma, because she had not a Mediterranean pass [Türkenpasse]. The Emma was accordingly left

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on the magistrate's hands, and, to be rid of it, he procured the aforesaid anonymous billet to be written, *falsely* representing the Eugenie as unseaworthy, in order to frighten Mr Gall from embarking in her, and to induce him to charter the Emma. What an elegy would not Mr Gall have sung over American faith, had this notable plot been hatched at New York or Philadelphia!

Since it is one of the main burdens of his book, as of that of Mr Schmidt, to charge the Americans with a shameless love of money, we shall say a few words more of the case of these same three hundred Würtemberg separatists, and their four leaders. These last gentlemen, besides proposing to bestow their whole company of three hundred into a Danish vessel of three hundred and seventy tons, charged each of the number at the rate of one hundred and forty-three florins the passage, although Mr Gall procured accommodations, every way superior, for his party, at one hundred and ten florins each. He very justly accuses them of putting the thirty-three florins' difference to each man, into their own pockets, and adding to this pecuniary fraud, practised on their flock, the infamous barbarity of crowding three hundred human beings into a vessel of three hundred and seventy tons, in addition to the ship's company. Mr Gall, who has a pungent speech ready on all occasions, made the following pertinent address to these pastors, in an interview which he happened to have with them aboard the Emma.

'Is it your design to put your party in that dark and dreary hole, into which neither the sun nor the air of heaven can penetrate; in which the breath of man soon becomes a deadly poison; in a receptacle [the lower hold] never designed for men, a thousand times more formidable than the most dreadful prison on land; in a space, where you, strong, healthy men, cannot stay half an hour, are you going to shut up for months, at sea, women, children, and the aged? Are you going to bury alive, to give up to the most tormenting death, those whom you call by the tender names of brother and sister? The unhappy wretches, whom intolerance drives from the peaceful home of their fathers, out upon the raging sea, who have placed their last hope, their whole confidence on your integrity; will you for a few florins expose them to greater dangers than they have fled from at home, greater than, but for you, they would have encountered at sea? That you have shamefully defrauded your constituents is plain, for you charge them one hundred and forty-three florins each, knowing

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I had provided for mine at one hundred and ten. The difference, of which you rob your party, would amount to thirty-three florins each, had you provided the same accommodations for your party as I for the Swiss, viz. two tons to the fare. Instead of this, two hundred and thirty tons more than you have provided are wanting to make two tons to a man. These would cost you seven thousand florins, and therefore, besides the thirty-three florins each, you actually defraud your society of seven thousand florins. Be satisfied with this plunder, and make atonement to heaven, by giving up the shameful design of destroying the health of your friends and relatives. For your own sakes, let the power of truth put an end to the delusion, with which the devilish thirst of gold has possessed your minds. Imagine your own situation, on board the vessel, in whose bosom you are breeding for yourselves the plague. Think of your condition on the open sea; will you not tremble, with a guilty conscience, at every wind that suddenly swells the sails, at every wave that breaks over your vessel? And when the plague begins to rage within, and one after another is drawn up and thrown overboard, and you, lashed by the furies of remorse, shall be obliged to say of each, "him have we murdered, and him, and him, and him"—and when the cries of the children, whom your avarice has made orphans —the raving of the maniac—the moaning of the sufferers—the rattle of the dying, shall call down the vengeance of heaven on their murderers—think you, that then, as now, the sound of gold will lull the awakened conscience? Relent, accomplish not the horrid purpose, and you will escape the rack of remorse. Persevere in your detestable design, and God's just vengeance will overtake you beyond the waters.'

To this animated harangue—*lengthy*, we should call it, for an accidental meeting in the steerage of a vessel—the reverend persons addressed, replied, one of them, 'What is that to you?'—Another, 'What have you to do with our concerns?' —A third, 'The gentlemen, with whom we made the bargain, know how many such a ship will hold.' Now these were Germans, whose unsuspicious honesty, says Mr Gall, is the constant prey of the hungry Americans. These were Würtembergers, the noble and free people, who enjoyed liberty at a time when the bears and elks roamed on the American coast. The horrid project was defeated in a great measure by the menaces of Mr Gall, that on the arrival of the vessel in America, he would prosecute the captain for bringing more passengers than were permitted by the American law. Thus the

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name of a wise and humane act of the American congress, that lawless, unprincipled, and powerless faction, as these gentlemen describe it, prevented two or three hundred free Würtembergers from being served up, by their pastors, as food for the sharks.

But we have left the thread of Mr Gall's story. By the 8th of May nothing had been heard of the Swiss, and Mr Gall began to have dismal forebodings of foul play. He accordingly set out to look them up, posted day and night back to Strasburg, learned, a little beyond that city, that they had descended the Rhine, turned on his heel, and had the satisfaction of going back to Antwerp, without however falling in with them, and through various mischances and perils, which we cannot stop to relate. One only is worthy of note. The boatmen, who took him down the Rhine, not choosing to stop to pay toll at a new-made bridge, where it seems the boats which pass under, like the wagons which pass over, are held to pay toll, Mr Gall had the pleasure of being fired at three times by the sentinels on the bridge. Of all the highways in a country, a good navigable river, like the Rhine, seems to stand the least in need of repairs, to owe least to human labor, and therefore to be the least proper subject of toll. Had such an event occurred to Mr Gall in America, we pledge ourselves that he would have cried out, first, against the extortion of the government in authorizing a toll for passing under a bridge; secondly, against the tyranny of placing sentinels with loaded muskets to enforce the payment of this toll, valuing a human life at two *kreuzers*; thirdly, against the villany of the boatmen, who, knowing these merciful regulations, chose nevertheless to violate them, at the risk of their passenger's life; fourthly, against the hazard of travelling in a country where such laws and practices exist. Not one of these remarks is made by our mealy-mouthed Mr Gall. But when in America, on passing a bridge with a segar in his mouth, and asking the daughter of a toll-gatherer to light it, he was presently after called upon by the toll-man, and bid to desist, as the law forbade the smoking of segars on bridges, Mr Gall breaks out in the silliest speeches that can be imagined, forgetting that for the like offence on the Rhine he was fired at with three leaden bullets. He arrived happily at Antwerp, after having travelled five hundred miles in six days, and returned as wise as he started.

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A part of the Swiss company, and among them the captain von —— g—— had arrived meantime at Antwerp; and our author's first business was to wait upon him. We quote this passage as a fine illustration of all their characters.

'As soon as I had dressed myself this morning, I called upon Mr von —— g——. "Who are you, sir?" said a rustic booby—a Swiss in dress and dialect, who seemed to be keeping watch at the door. I told him my name. "His worship is just at breakfast," said he. "Announce me, nevertheless," I replied. He went in and was gone so long that I was about to go away, when he finally came again to the door and motioned me in. I almost fancied myself in the antechamber of don Ranudo de Colibrados. I entered the room and saluted the company with politeness. It consisted of two elderly and two young ladies, a boy, and a pretty corpulent man, from forty to fifty years old, with a pair of spectacles and a wig. Nobody rose save the two oldest ladies. The young ladies looked at me, with a quality air, and their papa gave me a gracious nod to approach. "Excuse me," said I, as I retreated to the door, "I have made some mistake. I thought I had the honor to see Mr von —— g——."—"Captain —— g—— von —— d. You're right, I am he," replied the gentleman in spectacles, without rising. "Who I am," I replied, "you know, and I must confess I expected a different reception from von —— d——." "Sir," cried he, springing up, "you must not forget that I am a nobleman!"—"It were to be wished," I replied, "Mr von —— g——, that you should forget it—or stay in Europe." "Indeed," said he, "but what the devil have you been driving round the world after?"—"Enough, Mr von —— g ——," said I, "this very question I propose to you, and expect your answer at my lodgings." This is literally my first interview with Mr von —— g——. With these words—bowing to the ladies—I left the noble fools; afflicted at being compelled to seek, in a heartless intercourse with such a man in the wilds of America, a substitute for the intercourse of so many excellent friends.'

It is such trash as this, the refuse of all decent society in the old world, that would come to America, and pretend, in a new country, to set up for a new character. Mr Gall informs us, in his second volume, that this precious nobleman had gone into his own kitchen for a wife, and we doubt not when he too comes to publish his book, we shall hear about the total absence of 'all freedom of the soul' in America.

We had intended to give a little farther account of this

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rabble, but our limits do not permit. The Swiss gentlemen endeavoured to make poor Mr Gall individually accountable for all his advances, and strenuously refused to pay their proportion, till compelled by the threat of legal interference. Moreover, it appeared to Mr Gall, the day before his sailing, to use his own words, that 'a great part of the company of emigrants designed for the Eugenie, were *smugglers*, *thieves*, *cheats*, *prostitutes*, and other characters of this class. Many of them had been let loose from the gaol, just before their departure, and their parishes undertook to pay their passage to America, under the condition of their never coming back.' These are the gentry with which Mr Gall had associated himself without inquiry, and taking it on their own word, that they were the first people in Switzerland. As grossly deceived, abused, and cheated, he deserves our pity; but to hear a person, after bringing such an infamous gang to America, complain of the reception they meet, vilifying us for not hugging the filthy refuse of German and Swiss prisons, to our bosoms, and parading mawkish sentences about coldness and reserve, is beyond our patience. Why, a man could not probably have taken one of Mr Gall's company by the hand, without great risk; and how do we know he is any better himself? Every body, by his own showing, turns his back on him in Europe and America; his government declares him an alien; his company is the dregs of the gaols, and his reception here by his respectable countrymen, uniformly cold and distant.

We shall not accordingly proceed with our analysis of his work, nor trace him through his adventures among the congenial rabble of this country. The insolent and indecent manner, in which he speaks of a well known and most respectable mercantile house in New York—whose names are more entitled to honor, on every score, than those of two thirds of the continental nobility—are sufficient testimony to the spirit of falsehood and calumny, which Mr Gall brought with him and which reigns in his book. In fact, the end for which he wrote it is very apparent. He had, as we have seen, offended the Prussian government by encouraging the emigration to America, and this is his peace-making to the offended powers. We had made, in the perusal of his second volume, a number of notes, by which we could have convicted the sentimental Mr Gall of having had nothing more at heart in his voyage, than

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to make money by speculating on land, to the disadvantage of his emigrating countrymen. But our readers have heard enough of him.

ART. VI.—*Reports of cases argued and adjudged in the Supreme Court of the United States, February term*, 1822. *By Henry Wheaton, Counsellor at Law.* New York, 1822.

WE regard the publication of the decisions of the Supreme Court of the United States as a most important accession to our juridical learning. To those of the profession who do not confine themselves to the narrow walks of the common law, and whose desires are not fully satisfied by adjudicated constructions of local statutes, the reports of Mr Wheaton must be extremely valuable. There are many, we would hope, who are far from being edified by the grave discussion of the trifling and ludicrous questions, with which so large a portion of our books is occupied. We are slow to believe that any lawyer's comprehension is much enlarged, or his taste much improved by reading the solemn decisions of the king's bench, that an indictment for fraudulently selling goat's hair is bad without a venue, and that charcoal is not firewood; or the still more solemn (because more contested) decisions of the highest tribunal of an ancient commonwealth, that a dead hog is a swine, and that three small boys may sleep in one bed.* It is not, we trust, a mere blind attachment to an honorable profession, which induces our belief that its members will rather seek and peruse with avidity the volumes that record the masterly discussions of constitutional and international law. Such are the volumes with which Mr Wheaton has furnished us.

It is not our purpose to analyze the book before us; nor will we enlarge upon the manner in which the reporter has executed the task which peculiarly belongs to him. This was cursorily done, in a notice of a former volume; and we have now only to add, that if he has not since indulged in the 'prodiga copia,' he has at least avoided the 'damnosa concinnitas,' which of old provoked the malediction of sir Harbottle Grimston. Our object rather is, to call the attention of the

* Cun. Rep. 94: Sayer 4: 15 Mass. Rep. 170. 205.

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profession and of the public to the decisions of our national court, and to suggest a few of the reasons which influence our judgment concerning their paramount importance.

It is an unmanly squeamishness to pretend that the jurisprudence of the northern states is not in an unhopeful condition. Of the causes, which are different in different states, we have at present nothing to say. But this we affirm without hesitation or fear, that the prospects of legal science are, at this hour, worse in every state north of Pennsylvania, than they have been at a former period.* It is not to be disguised; and it is weakness, or something more pitiful, to affect ignorance or want of observation on this subject. There may be some boldness in the avowal, but there is little sagacity in the discovery. A moderate acquaintance with recent decisions will show that there has been of late a gradual departure from the old highway of the common law, a disposition to decide on principles (if they deserve the name of principles) of notional equity and imaginary convenience, rather than according to preestablished rules and legal conformity, to array a supposed common sense against immemorial usage, and to impute to legal learning the effect charged by the Roman governor upon the pupil of Gamaliel.

We are aware that there are compurgators about every tribunal, who are ready to attest the accuracy and profoundness of its judgments, and champions to defend by tongue and pen, and other devices, the resources and the infallibility of the forum to which they are attached. 'De'il ha'e Caleb Balderstone, if the family shall lose credit, if he were as mad as the seven wise masters.' We are equally aware that there ever have been and ever will be malecontents, who will attribute the loss of a cause to any misjudging but their own; who will alternately complain of expanded views as lax, and of strictness as narrow; whose heads are muddy from indigested learning, and whose tempers are soured by the disappointment of hopes which they never ought to have cherished. We dread the auspices of this latter class more than the resentment of the former.

From the 'radical' spirit, with which some of the state courts seem to be infected, the judges of the national court

* We would guard against an inference, *of any sort*, from our silence respecting the other states in the Union.

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are wholly free; and we avow our sanguine hope, that their profound erudition, their encouragement of research, their commanding talents and influence, joined with their paramount authority, will yet recall the course of justice, in those states that have heretofore boasted of an enlightened judiciary, to its old and deep-worn channels. We hope the time will again come, when the most eminent counsel will not feel imperatively bound to carry to this court every cause of which it may have jurisdiction; or if they do, that it will not be, as now, because they have greater confidence in the soundness and stability of its faith, and its reverence for authority.

While, however, we deprecate wanton departures from the common law, we would disclaim that professional narrowness which discerns no difference between improvement and alteration. We require not to be told that the first fountains of this law were obscure and scanty, and that it has often been polluted in its progress,—that it has received additions from a thousand different sources, and by length of time worked itself into clearness, and flowed in an abundant stream to enrich and adorn the whole land of our fathers. Even at this day, we rejoice to see it swelled by the opening of new springs, and applied to the novel operations which the inventive genius of the age has devised. But we protest against obstructing or diverting its course, as we would against any other nuisance. Instead of inculcating forbearance, we would invoke the earliest and most summary redress. On this point we would adopt the sentiments of Burke. 'I am not of the opinion,' says he, 'of those gentlemen who are against disturbing the public repose. I like a clamor whenever there is an abuse. The fire-bell at midnight disturbs your sleep, but it keeps you from being burned in your bed. The hue and cry alarms the county, but it preserves all the property of the province.' Decorous animadversions upon judgments of doubtful accuracy are not to be reprehended. So long as they exhibit strong reasoning and sound learning, their effects must be salutary. The dernier resort is to the suffrages of an able and enlightened profession, whose voice no court can contemptuously disregard without furnishing irrefragable proof of its own incompetency or corruption.

Many considerations give weight and importance to the decisions of our national court. The sphere of their move-

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ments, and the extensive territory from which they are selected, greatly diminish the probability that the law, under their administration, will partake of the complexion of the individual judges. In the state courts, it is almost impossible to avoid this evil. New judges are the pupils of their predecessors; have practised under their observation and guidance, and have imbibed their views. They are, in many instances, indebted to their associates for promotion, and must be expected of course to unite in their fraternity. This, it is most obvious, forms an obstacle to the correction of error, and gives no flattering promise of legal improvement. 'My law,' says the orator before quoted, 'should not depend upon the fluctuation of the closet or the complexion of men. Whether a black-haired or a fair-haired man presided in the court of king's bench, I would have the law the same; the same, whether he was born *in domo regnatrice*, and sucked from his infancy the milk of courts, or was nurtured in the rugged discipline of a popular opposition. This law of court cabal and of party, this *mens quædam nullo perturbata affectu*, this law of complexion ought not to be endured for a moment, in a country whose being depends upon the certainty, clearness, and stability of institutions.' This law, however, has sometimes made its appearance in our state courts; but to those courts it has hitherto been confined. The suggestions already made, and numberless others which will readily occur to the intelligent reader, sufficiently account for the fact, and furnish ground for apprehension, that the mischief will not be easily removed. It will be in these courts, if in any, that personal antipathies will exert their unhallowed influence, even on the judgment-seat. By the responses of these oracles, if of any, will political and religious cabals be inspirited to urge their factious and intolerant career. Under the sanction of these courts will private rights become the sport of popular clamor and legislative usurpation; and to the justices of the national court must the eloquent and effectual appeal again be made—*Nisi apud vos, nihil est præterea quo confugere possimus.*

The manner in which questions are argued and opinions delivered, in the supreme court of the United States, gives to their judgments an imposing authority. No case is allowed to pass without discussion; and the arguments, when made, are full and thorough. Counsel are not interrupted and

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catechised like schoolboys, in order to impress on a vulgar audience a sense of the court's acumen, and its discipline of the bar. Where the most ancient books of the law are cited, the court do not sneer; nor do they stare in vacant wonder at the names of the last English reporters. In their consultations, they do not take for granted that their first impressions are correct, merely because they are unanimous, and therefore dispense with further examination; nor do they attempt to resolve all their doubts—*dum fingere nesciunt*—by looking into Espinasse's Digest and Blackstone with Christian's notes. In delivering their opinions on important points, they do not seek to foreclose future discussion of kindred topics, by an affectation of exhausting the subject and stating the whole law in a series of slovenly generalities, which they are afterwards compelled to retract or modify. They do not elude the pressure of authority by their mere lubricity, nor misstate and treat with *persiflage* and sarcasm, arguments which they cannot meet and answer. And though last, it is not, in our judgment, the least of these negative recommendations, that they never have occasion to conceal the soft and spongy texture of their reasoning, under the varnish of a puerile rhetoric.

We have always believed that the scoffings at our native literature, in which foreigners have so freely indulged, would be better met by producing works of unquestionable merit, than by braggart assertion and angry recrimination. Our countrymen were formerly called cowards. Bunker Hill and Saratoga more effectually refute the calumny, than the boastful defiance of half a century. In reply to the charge of semi-barbarism brought against our jurisprudence—instead of sneering at the wager of battle, so recently declared to be a part of the common law of England, we would exhibit the reports of Cranch and of Wheaton. When told that our judges are the creatures of the administration, instead of reviling the memory of Scroggs and Jeffries, we would point to the trials of Burr and of Smith and Ogden. If the competency of our judiciary should again be denied by British libellers, instead of a noisy altercation, we would produce our documents and readily submit the question to their own law-lords, whether any of his majesty's courts of law now display greater patience of research or depth of learning, a higher reach of

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intellect or more profound ratiocination, than the supreme court of the United States. To the benchers of Lincoln's Inn we would as readily refer a decision upon the comparative erudition, talents, and eloquence of the bar. And if estoppels were not odious, we should incline to rely on the commendation of Mr Dallas's first reports, bestowed more than thirty years ago by lord Mansfield, and the recent opinion expressed by lord Stowell of the ability and learning of our national judges.

'There is scarce any object of curiosity more rational,' (says the author of 'An essay towards a history of the laws of England') 'than the origin, the progress, and the various revolutions of human laws. Political and military relations are, for the greater part, accounts of the ambition and violence of mankind; this is a history of their justice. And surely there cannot be a more pleasing speculation than to trace the advances of men, in an attempt to imitate the Supreme Ruler in one of the most glorious of his attributes, and to attend them in the exercise of a prerogative, which it wonderful to find entrusted to the management of so weak a being. In such an inquiry, we shall indeed frequently see great instances of this frailty; but at the same time we shall behold such noble efforts of wisdom and equity, as seem fully to justify the reasonableness of that extraordinary disposition, by which men, in one form or other, have been always put under the dominion of creatures like themselves. For what can be more instructive than to observe the first principles of RIGHT springing up, involved in superstition and polluted with violence; the laws sometimes lost and trodden down in the confusion of wars and tumults, and sometimes overruled by the hand of power; then victorious over tyranny—growing stronger, clearer, and more decisive by the violence they had suffered enriched even by those foreign conquests which threatened their entire destruction; softened and mellowed by peace and religion; improved and exalted by commerce, by social intercouse, and that great opener of mind, ingenuous science?' If any thing can be more instructive, it is the peculiar history of American jurisprudence. There are great encouragements to search this history, and no lack of materials or help for the work. Whoever shall look deeply into this subject, will find, if we mistake not, that if the stream

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has sometimes been irregular and turbid, it has not been from any commotion or impurity in the fountain. It will be found that among the first fathers of our country, the law was no narrow and inglorious study, that their jurists were imbued with its true principles, and deduced its spirit from original justice, and that in claiming magna charta as the charter of the American forests, their judgment was no less enlightened than their temper was resolute. It will be found that the sorry logic, the refuse of the schools, which so grossly disfigures the contemporary legal publications in England, never disgraced even the earliest of our judicial tribunals. Could he from whom we have cited the above interrogatory—he who forty-eight years ago portrayed, with unrivalled beauty, the growth and rising glory of our country—now sketch the progress of the laws brought by the pilgrims across the ocean and cherished as their birthright, stripped of their feudal character, attempered to the fundamental maxims of English liberty, now retrenched and now amplified by enactments, modified and adapted by common consent to the exigencies of their colonial state, he might furnish a lesson of admirable interest and instruction, and such as the first century and a half of no other people's history can exhibit. The state of the laws, during the war of the revolution, and the remaining years of the confederation, when displayed by a master of such comprehensive and philosophizing sagacity, would teach us that where the fierce spirit of liberty is duly chastened and regulated, there may be temporary anarchy without endangering future subordination: but the subject, on which all his exalted powers could find scope for their highest exercise, would be the modelling anew of the state constitutions, the consequent revision of the state laws, the adoption of a national compact predicated on an existing common law, binding all in one grand confederate government, the maturing by time and wisdom of this compound system, and the liquidation and adjustment of all the parts in a harmonious and consistent whole.

The power and duty of the national court to declare void and arrest the enforcement of legislative acts, which violate the constitution of the United States, though long and stoutly denied, are now most fully settled. It is, as was early said by Mr Justice Iredell, 'an authority of a delicate and awful nature;' but it necessarily results from the simple principles,

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that the nature and ends of legislative power must limit its exercise; that the nature and terms of the constitution are the foundation of this power, and must determine its objects; that the will of the people declared in the constitution must control the will of the legislature declared in its statutes; and that the interpretation of the laws, fundamental and superstructive, is, in the last resort, the exclusive province of the judiciary: that legislative is a delegated authority; that all acts, contrary to the tenor of the warrant under which it is exercised, are void; and that neither the constituent nor the delegate is competent to decide ultimately on their validity. These principles seem not less valuable than clear. We have always believed that the sanctity of private rights and the stability of our public institutions essentially depend upon the firm and enlightened exercise, by the judiciary, of the power of deciding on the validity of the national and state enactments. The few years that comprise Mr Wheaton's reports have fully confirmed this belief. The judgments of the supreme court, within that period, on questions that regard state pretensions and legislative power, have greatly relieved the fears of the friends of our republican establishments concerning their permanency, and repressed the boding spirit which once so often warned the people that their federal government must eventually be prostrated in a conflict with the state authorities. On no subjects are the dignity and importance of the judiciary so manifest, and on none have the strength of their faculties and the sublimity of their fortitude been so illustriously displayed. Two of the authors of the Federalist have lived to see the doctrines respecting the extent and objects of the federal judicature, which were so clearly exhibited and ably defended in their incomparable writings, embodied as in a national creed, taught in our universities, made the text-book of our ripest scholars, cited as authoritative by our profoundest jurists, and carried into effect by the united efforts of all the coordinate branches of the government. Having received the highest earthly honors, and voluntarily retired, the one from the head of the judicial, the other from the executive department, they find the reward of their former labors and anxieties in the happiness and glory of their country. In their joyful retrospect, however, an intermittent shade of sadness must pass across their souls as they call to mind the chief contributor to

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those writings, the coadjutor of those toils and partner of those anxieties, who was 'treacherously slain in the midst of his unfinished labors,' and denied the vision of those scenes, for which his patriotic spirit panted, and of the full maturity and effect of those principles which his matchless genius developed.

The class of questions, next in importance, which come before the federal courts, are those of admiralty jurisdiction. The history of that jurisdiction in this country is anomalous and interesting; but this is not the appropriate place to examine it. The authority of the courts, erected or empowered by the colonies, under a resolve of congress, in November, 1775, to determine concerning captures, and the appellate power reserved by that body; the jurisdiction of the court of appeals established by congress, under the articles of confederation, and the effect of the adoption of the constitution on causes then pending in those courts, would admit an ample and instructive discussion. A work, embracing these and their connate topics, is a desideratum; and we know no man who could accomplish it with greater facility or talent than Mr Wheaton. We will hazard a suggestion, that when he shall publish another edition of his valuable treatise on prize law, he will greatly enhance the obligations of the profession, by adding a historical sketch of the kind we have abovementioned. Let us not be supposed, however, to have overlooked his excellent notes on the prize jurisdiction and practice, appended to the two first volumes of his reports. There is no systematic treatise on the jurisdiction of the admiralty, in England, or here, that is accurate and thorough. True and lasting fame awaits the jurist who shall produce one.

Cases of admiralty jurisdiction are exclusively cognizable by the federal courts; yet it was not till five years after the constitution of the United States went into operation, that it was definitively settled that these courts possessed all the powers of a court of admiralty, whether considered as an instance or as a prize court. This, which now seems so plain, was not discerned by the district courts. We are indebted for this doctrine, and its application, to the wisdom and firmness of the supreme court. A short account of one branch of this doctrine may be pardoned. In the year 1793, a great number of French privateers were commissioned, armed, and equipped in our ports, under the sanction of the minister of

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the French republic. They left port, as was officially said by Mr Jefferson, then secretary of state, 'to cruise on our coast, and to brave the authority of the country, by returning into port with their prizes.' Many libels were filed in the district courts, alleging that the ships, thus brought into our ports, were captured by these privateers, and claiming restitution to the owners. These libels were dismissed, in at least five districts, on the ground that the courts had no jurisdiction, but that matters of this kind appertained to the executive department. This renunciation of jurisdiction by the courts caused great embarrassment to the government. President Washington recommended that congress should regulate their jurisdiction, and expressed a hope, that if the executive was to be the resort in those cases, he should be authorized by law to have facts ascertained by the courts, when, for his own information, he should request it. Before congress had time to provide for the case, the question was brought in review before the supreme court of the United States (3 Dallas 6), who unanimously decided that the district courts had competent jurisdiction of all such cases, and remanded the cause to the court for the Maryland district, for a final decision. 'This,' says Mr Chancellor Kent, 'was one of the most salutary decisions ever made by that court. The anomaly raised in the district courts disappeared forever, and the course of public and national law flowed in its accustomed channel.'

As the prize court of admiralty decides according to the law of nations and the course of the admiralty, and the instance court, according to the civil law, the laws of Oleron and the customs of the admiralty modified by statute, it is obvious that this jurisdiction of the national courts brings into discussion questions on which mere common law counsellors must be silent. The admiralty system is a beautiful one, when well understood and administered, but it is extremely neglected by the students of the common law, of which it never has been a favorite. Our country is indebted to Mr Justice Story, *quem appellasse, laudasse est*, for his efforts to transfuse the prize law of Europe into our own, and for the great light which his researches have thrown on subjects of national and maritime law. Whatever may be thought of the justice, the policy, or the conduct of the war of 1812, it certainly is a splendid epoch in the history of our national jurisprudence;

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and no one can read the opinions of the learned judge just named, without being convinced of the superior learning and more enlarged views, which are derived from an acquaintance with the admiralty civilians.

We deem it a scandal to the profession that the reports of the decisions of the federal courts have so limited circulation: and cannot but publish our astonishment, that they are to be found in so very few of the county law libraries in Massachusetts. Whether gentlemen covet the title of scholar, politician, or lawyer, we should expect them to be informed of the contents of those volumes. They will there find manly juridical eloquence and the ablest legal reasoning. It is on questions of national and constitutional law that the highest powers of the mind are exerted, and the noblest efforts of forensic genius demanded. The common topics of litigation neither require nor permit these efforts. *Crescit enim cum amplitudine rerum vis ingenii, nec quisquam claram et illustrem orationem efficere potest, nisi qui causam parem invenit.* We are here reminded of statesmen and orators, whose eloquence we shall hear no more. The reputation of men like Dexter and Pinkney should be brought forward on all occasions. Their country has an interest in it. The character of the former has been portrayed by Mr Justice Story, whose sketch is prefixed to the first volume of Mr Mason's reports. Mr Wheaton has thus delineated that of the latter in the volume before us:

'To extraordinary natural endowments, Mr Pinkney added deep and various knowledge in his profession. A long course of study and practice had familiarized his mind with the science of the law, in every department; and his attainments in the auxiliary branches of learning, essential to the jurist and advocate, were of the most profound and elegant character. For many years he was the acknowledged leader at the head of the bar of his native state; and during the last ten years of his life—the principal period of his attendance in this [the supreme] court [of the United States]—he enjoyed the reputation of having been rarely equalled, and perhaps never excelled, in eloquence and the power of reasoning upon legal subjects. His mind was acute and subtle; rapid in its conceptions, and singularly felicitous in the exposition of the truths it was employed in investigating. Mr Pinkney had the command of the greatest variety of the most beautiful and peculiarly appropriate diction, and the faculty of adorning and illustrating the driest and most intricate discussions.

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His favorite mode of reasoning was from the analogies of the law; and while he delighted his auditory by his powers of amplification and rhetorical ornament, he instructed the court by tracing up the technical rules and positive institutions of jurisprudence to their historical source and first principles. He was profoundly versed in the ancient learning of the common law; its technical peculiarities and feudal origin, its subtle distinctions and artificial logic were familiar to his early studies, and enabled him to expound, with admirable force and perspicuity, the rules of real property. To this, and his other legal attainments, he superadded, at a later period of life, an extensive acquaintance with the theory and administration of public law.

'In the various questions of constitutional law, which have been recently discussed in this high tribunal, it may be said, it is hoped, without irreverence, that Mr Pinkney's learning and powers of investigation have very much contributed to enlighten and fix its judgments. In the discussion of that class of causes especially, which, to use his own expressions, "presented the proud spectacle of a peaceful judicial review of the conflicting sovereign claims of the government of the Union and of the particular states, by this more than Amphictyonic council," his arguments were characterized by a fervor, earnestness, gravity, eloquence, and force of reasoning, which convinced all who heard him, that he delivered his own sentiments as a statesman and a citizen, and was not merely solicitous to discharge his duty as an advocate. He exerted an intellectual vigor proportioned to the magnitude of the occasion. He saw in it "a pledge of the immortality of the Union—of a perpetuity of national strength and glory, increasing and brightening with age—of concord at home, and reputation abroad." And in his argument on the constitutionality of the charter of the bank of the United States, he stated, that "the considerations which the question involved, imparted to it a peculiar character of importance; and this tribunal, distinguished as it is for all that can give to judicature a title to reverence, is, in deliberating and adjudicating upon it, in the exercise of its most exalted, its most awful functions. The legislative faculties of the government of the Union, for the prosperity of the Union, are in the lists against the imputed sovereignty of a particular state: and you are the judges of the lists;—not indeed upon the romantic and chivalrous principles of tilts and tournaments, but upon the sacred principles of the constitution. In whatever direction you look, you cannot but perceive the solemnity, the majesty of such an occasion. In whatever quarter you approach the subject, you cannot but feel that it demands from you the firm and steady exertion of all

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those high qualities which the universal voice ascribes to those, who have devoted themselves to the ministry of this holy sanctuary."

'That intense application to his professional and public labors, for which Mr Pinkney was so remarkably distinguished, continued to animate his exertions to the last moments of his life; and as he held up a high standard of excellence in this honorable career, he pursued it with unabated diligence and ardor, and still continued to speak as from the impulse of youthful ambition. His example was therefore of the greatest utility in exciting the emulation of the profession. But it is as an enlightened defender of the national constitution against the attacks which have been made upon it, under the pretext of asserting the claims of state sovereignty, that his loss is most to be lamented by the public. It is known to his friends that he was, a short time before his death, engaged in the investigations preparatory to making a great effort in the senate upon this interesting subject. The loss of such a commentary upon the constitution, by one who had so profoundly meditated its principles, may be regarded as a public calamity. It is also to be regretted that the great fame of his eloquence must rest mainly in tradition; as it is believed that no perfect memorials of his most splendid efforts in the senate or at the bar have been preserved, and it is obviously impossible to form any adequate notions of the powers of an advocate from the sketches of the arguments of council contained in the books of reports.'

ART. VII.—*An Introduction to the Critical Study and Knowledge of the Holy Scriptures; by Thomas Hartwell Horne, M. A. of St John's College, Cambridge, Curate of the united parishes of Christ Church, Newgate street, and Saint Leonard, Foster lane. Second edition.* London, 1821.

WE are informed, in the preface to this work, which has already found a very considerable circulation among biblical scholars on this side of the Atlantic, that it is a selection from the labors of the most eminent biblical critics, both British and foreign, and is designed as a comprehensive *manual* of sacred literature. The plan of a work of this kind, one which might serve the biblical student as a general introduction to the holy scriptures, and afford those facilities, which every one would esteem desirable for solving the difficulties that might

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come in his way and otherwise materially perplex his progress, was conceived by Mr Horne, as it seems, at a very early period, and occupied his exertions and studies for *twenty years* before its completion and publication in its present form. That our author found himself, in the commencement of his biblical studies, in want of a work of the kind which he has presented to the public, is not at all surprising, when it is remembered, how few books of standard merit on the subject of sacred literature, particularly on the criticism of the old testament, have made their appearance in English; and, as the want, which he experienced, has been felt by so many others, we trust he will receive the gratitude and thanks of all true friends of a thorough knowledge of the bible, for the attempt to remedy it, which he has so perseveringly, and laboriously, and, in many respects, successfully made.

The first of the four volumes, through which this work is extended, treats of the genuineness, authenticity, uncorrupted preservation, and inspiration of the holy scriptures. That the *Introduction* should begin with discussions of this kind seems to us perfectly proper; for it is clearly a matter of the first importance, that the student should know, whether the books, which are the objects of his attention, were written at the time assigned to them, and by the persons to whom they are ascribed, or not; whether the facts recorded in them are worthy of credit; whether the copies at present in use are true transcripts from the originals; and whether they exhibit any just claims to be considered as inspired. It is true, that some of the arguments, which are made to bear upon these points, imply a previous critical acquaintance with the books themselves; but then the difficulty only amounts to this, that the student is under the necessity of taking some things on the authority of others, with the fair expectation of soon being able, by means of his own investigations, to confirm them, if true, and to correct them, if erroneous. The first chapter, the subject of which is the *necessity of a divine revelation*, contains (although we would not be understood by making the remark, as approving, to the full extent, every assertion that is made in it) a striking exhibition of the weakness and evil tendencies of the human mind, when destitute of any supernatural illumination; and more especially of the miserable *morality*, if it may be called by that name, of such men as Hume and Bolingbroke,

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Voltaire and Helvetius, when compared with the pure and exalted moral precepts of the scriptures. It is calculated to leave a deep and authoritative impression, that, without the bible, we should be left, even at this late period, in the grossest ignorance and the most deplorable error, on subjects of the highest concernment.

In the interesting remarks on the *genuineness* of the different books of the old testament, we could only wish, that Mr Horne had made the subject of the CANON of the old testament a more distinct and separate point of consideration, as it undoubtedly should have been, and had left it in a little less obscurity. It seemed to us important that the word *Canon* (Κανών) itself, which at different times has borne different significations, should have been more particularly defined; and when, on the forty eighth page of the volume under consideration, we are referred to the testimony of the Septuagint, of Philo, Josephus, Origen, Melito and others, we wish to understand precisely the bearing and the extent of their evidence, which are not altogether clear. If by the *Canon* Mr Horne means a collection of Jewish writings extant in the time of our Saviour, supposed to have been written by holy men of old, and regarded as of divine origin, the testimony of the authorities just mentioned, and of others, that Mr Horne brings forward, is good and to the purpose; but he will no doubt admit on a little reflection, that a book may be canonical and still not be genuine, may have belonged to the collection in question, and still not have been written by the person, to whom it is usually attributed. There is a distinction in the meaning of the words *genuine*, *authentic*, *canonical* and *inspired*, which, it is important, should be kept up in a professed introduction to the scriptures, unless we are expressly informed, that these words, in point of signification, are designedly confounded together. We see no objection to the general train of Mr Horne's argument in this part of his work, which appears to be, however, as he led us to expect in his preface, a compilation from other treatises. We consider it perfectly clear, that Moses must have been himself in the main, the author of the Pentateuch; and cannot feel ourselves at liberty to detract in the least from that faith, which we have exercised from childhood, in the worth and genuineness and authenticity of the scriptures, without refus-

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ing to allow any weight to the greatest possible accumulation of moral evidence.

That Moses made use of certain written documents, which had been in existence previous to his time, in the composition, or, as we should rather be inclined to say, in the compilation of Genesis, and that there have been a few alterations made in respect to names, since his day, in a number of instances *interpolations*, and some *additions*, is all clear, and we should go in the face of the plainest evidence, if we should avow a disbelief of it; but in the view of every reflecting mind, of every person who makes any rightful pretensions to scholarship, circumstances of this kind would naturally enough be expected, certainly would not appear peculiarly strange, and would be very far, we trust, from shaking the firmness of his faith. We think it probable, that our opinions in respect to the origin of the book of Genesis may not be altogether in coincidence with those of Mr Horne, from what he has to say at page sixty third, of the first volume, in regard to the controversy on the subject, which was first brought into much notice by the publication of the physician *Astruc*, entitled, *Conjectures sur les Mémoires originaux dont il paroit que Moyse s'est servi pour composer le livre de la Genèse.* 8vo. Bruxelles, 1753. Astruc supposed that he was able to discover the traces of no less than twelve ancient documents, from which, not only the whole book of Genesis, but likewise the earlier chapters of Exodus were compiled; Eichhorn, on the contrary, reduces the number of them to *two*, distinghuishing one by the name of the אֱלֹהִים, the other by that of the יְהוָה document. Mr Horne remarks concerning the hypothesis of Eichhorn, which is adopted by Rosenmüller, and, in its essential features, by Jahn, that there is but one objection to it, which, however, he apprehends to be a fatal one; namely, the *total silence* of Moses, as to any documents having been consulted by him. But this objection, which appears so formidable in the eyes of our author, seems to us to possess but small weight; and as to what he afterwards observes, in regard to the *refinement* of Eichhorn's speculations, we are compelled to say, that the remarks of that writer are such, although perhaps not correct in every particular, as might be expected from a person, who was eminently qualified to detect and to estimate differences and coincidences in style,

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and who, while he never wanted ability to contrive an hypothesis, rarely failed in bringing ingenious and powerful arguments in support of it.

After treating of the genuineness, authenticity, &c. of the old testament, Mr Horne proceeds to the consideration of those points in respect to the new; and in the latter half of the first volume, treats at great length, and with learning and ingenuity, of the *inspiration* of the scriptures. Such is the multiplicity of arguments made to bear upon this subject, and such the variety of considerations brought to view in connexion with it, that we are unable, consistently with our limits, to give a particular account of them, and must refer our readers to the book itself. Among other subjects which are introduced into the appendix of this volume, we find a short notice of the Apocryphal books of the old and new testament. This subject is again introduced in the fourth volume, and we have but a single remark to make in regard to it. Whatever may be thought of the Apocryphal books, considered as authority in matters of religion, and whether they be of greater or less use to people in general, the study of them is certainly a matter of no inconsiderable consequence to the professed biblical student. These books, (we have reference now to the Apocrypha of the old testament,) appear from the best information to have been chiefly written between the time of the captivity and the coming of Christ. We might be pardoned, therefore, in expecting to find in a work, which professedly treated of these productions, some account of the literary spirit of that period, of the connexion of the Hebrews with the Egyptians and Greeks, and of the influence of this connexion on the style and peculiarities of thought in the writings of which we are speaking. The history of that period is interesting in consequence of its connexion with the Apocrypha, and the Apocrypha is important in consequence of the light, which it communicates to the contemporaneous history; and when studied with a truly historical and literary spirit, it will be found to be none the less important in consideration of the aid, which it in many ways affords in the interpretation of the new testament. We are unable to say, that we have found any work as yet in English, on the history of the period between the Babylonish captivity and the advent of the Messiah, and on the religious, philosophical, and literary spirit of

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the Apocryphal writings of that time, which has in all respects met our views and wishes.

The discussions in the first part of the second volume relate to the original languages of the bible, to the Hebrew and Greek manuscripts, to the editions of the old and new testaments, to the ancient and modern versions of the scriptures, to various readings, harmonies, &c. The second part of this volume is wholly occupied with a subject of no little interest and importance, viz. that of *interpretation*. We have already had occasion to express our sentiments in respect to this subject in our notice of the *translation of Ernesti* recently published; and we think we have ground for anticipating, both from that translation and from the discussions in the present work on the subject, that there will at length be a better understanding, and more harmony in respect to the principles and rules of interpretation, and of course, as we conceive, a greater harmony in its results. We shall always welcome any thing which may have a tendency to lessen the ground of controversy between 'jarring sectaries,' and to relieve that volume, which always has been and no doubt will continue to be essentially connected with human happiness, from the misconstructions and perversions of men, who are either too ignorant to see its meaning, or too much bound by the strong chains of party feelings to their own particular sect, to acknowledge it.

We notice, that Mr Horne at the end of his account of the various Hebrew grammars, which is published in the appendix to the second volume, feels a difficulty, such has been the number of them, in deciding, which is to be adopted in preference to the others. Perhaps it may be attributed to our want of information, and perhaps to an undue prejudice in favor of any production from the pen of a countryman, but we must say, if Mr Horne feels a delicacy on the subject, that we are quite free in the present case from that refinement of feeling, and do not hesitate to express our opinion, that professor Stuart's Hebrew grammar is the best which has as yet appeared in English. We do not mean this remark, as any reflection on our author, who had probably not received professor Stuart's grammar, when the second edition of his work was put to press, and who will certainly do it justice at some future period. The great work of Gesenius, in German, undoubtedly stands at the head of

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the six hundred publications, which are said to have appeared at various times on the subject of Hebrew grammar; but Mr Stuart has contrived to weave into his own work what was most valuable in Gesenius, and has made some improvements on the grammar of that eminent Hebraist.

The third volume of this work, which, as far as the subject matter of it is concerned, might, without any difficulty, have formed a separate publication, is occupied throughout, after first giving some account of the geography of Palestine, with what may be termed *biblical antiquities* or *biblical archæology.* The most perfect and thorough and interesting work on the subject of biblical archæology, with which we are acquainted, is the large work of *Jahn,* (whose name we have already had occasion to mention in this article,) written in German, in five large octavo volumes. It is of course inaccessible to the generality of English readers. The abridgment in Latin, a second edition of which was published at Vienna in 1814, under the following title, *Archæologia Biblica in Epitomen redacta a Johanne Jahn. Editio secunda emendata:* and of which a translation in English has lately been published in this country, is called by Mr Horne in his appendix to the third volume, *an elaborate compendium of biblical antiquities.* We will venture to say further, although it comes short, from the nature of the case, of the excellence of the original work, that, for extent and variety of learning, perspicuity of plan, and vividness and conciseness of statement, it is a book which is very rarely surpassed. It is to this book, if we are not very much mistaken, that Mr Horne is indebted more than to any other for the excellence of his third volume; and we have only to say, if this be the case, that we regret not to perceive any more liberal acknowledgments of this obligation.

The subject of biblical antiquities is one of prominent importance to the student in theology. If a person would be considered, as but ill prepared to enter into the full understanding and spirit of the Greek tragic poets, while perfectly ignorant of the institutions, manners, and customs of the Greeks—or of Horace, while equally limited in respect to his knowledge of the Romans, he must justly be considered, as being in no better a situation, to imbibe, to their full extent, the true meaning and spirit of the scriptures, while he

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is unacquainted with the history, and arts, and occupations, and manners, and customs of the Jews. It is not, till we are possessed of such an acquaintance, till we are able in imagination to place ourselves by the banks of Jordan, or on the plains and deserts, where the Hebrew shepherds wandered, till we can summon around us the cedar-crowned hills, where warriors fought and poets loved to linger, with the circumstances of dress and manners and employments and feelings, it is not till we have some understanding of these things, that we are in a situation to follow the story of those warriors, or to be enraptured with the song of those bards. We learn from the preface, that Mr Horne's work is to be introduced as a text-book into certain American seminaries, viz. the college at Princeton, New Jersey, and the Protestant Episcopal seminary at New Haven. At these seminaries, the importance of an acquaintance with biblical antiquities is undoubtedly understood, and we have no hesitancy in saying, that the third volume of this introduction, (the one on which we are remarking,) will be found of essential assistance, and every way valuable. Among the multitude of subjects which naturally find their way into this volume, there are many, on which we might find it interesting and profitable to dwell, and to offer our remarks; but if we should once give way to the temptation, we might prolong our speculations beyond the patience of our readers; and we therefore proceed to a brief notice of the fourth volume.

We have bestowed very decided commendation on Mr Horne's work, and say now that it does him credit, even when it is remembered that twenty years of labor have been expended upon it; but truth obliges us to say, that in the fourth volume, especially in particular parts of it, there is a lamentable falling off. It was to this volume, which is an analysis of the old and new testaments, that we were naturally led to look for a very considerable share of interesting instruction, for the solution of many difficult questions, connected with the literary history, the grammatical structure, the style, &c. of the different books, of which they are made up. On the fourth page, Mr Horne assures us that nothing is more certain, than that Genesis was *written*, not compiled, or abridged, or altered, or sanctioned, but *written* by Moses. But can he have forgotten the reference which he made in the first vol-

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ume to the theories of Astruc and Eichhorn, or have been ignorant of the fact, that the origin and authorship of Genesis are points, which for many years have called into exercise the controversial abilities of many eminent men on the continent of Europe; and of course, that a mere assertion on a point of that kind, without argument and proof, must and ought to go for nothing.

In our remarks on the second volume, which were necessarily concise, we took occasion to speak favorably of what Mr Horne had written on the subject of interpretation; although we at the same time recollected, that there were some things in his remarks, which under other circumstances we might have felt ourselves under the necessity of objecting to, and of controverting. We are led to make this remark in consequence of noticing the result of his principles of interpretation in the fourth volume, as far as types, the secondary or spiritual sense, &c. are concerned. We observe, that he makes Adam, Abel, Enoch, Melchizedek, Abraham, Isaac, Jacob, Joseph, Moses, Aaron, the paschal lamb, the manna, the rock in Horeb, the mercy seat, the tabernacle, the ordinance of the red heifer, the water that issued from the rock, the brazen serpent, the cities of refuge, Joshua, Jonah in the whale's belly, &c. types of the Messiah. Now we have not the least disposition to deny the existence of types in the old testament; but we think it is a subject, on which a cautious judgment should be exercised, and are glad to find the following remarks in the translation of Ernesti by professor Stuart, already alluded to. 'If it be asked, How far are we to consider the old testament as *typical?* I should answer without any hesitation; just so much of it is to be regarded as typical, as the new testament affirms to be so, and NO MORE. The fact, that any thing or event under the old testament dispensation, was designed to prefigure something under the new, can be known to us only by revelation; and, of course, all that is not designated by divine authority as *typical*, can never be made so by any authority less than that which guided the writers of the scriptures.' p. 13. If this rule, laid down by Mr Stuart, had been adopted by our author, and if the passages which he refers to in the new testament had been examined with a critical and judicious eye, we apprehend that the formidable number of prefigurations to which he introduces us, would

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have been considerably diminished. In a book coming from so high authority we should no doubt be pardoned in expecting, in an account of the prophet Isaiah, some notice of the controversy in respect to the genuineness or authorship of the twenty-six last chapters commonly attributed to him. Nor should we probably be considered as exorbitant, if, in the account of the prophet Ezekiel and his writings, we should expect some development of the principles on which an explanation might be given of the sublime, but peculiar visions to be found in them. But, while we are compelled to say, that the articles on the particular books of the old testament are not in all respects such as they should be, and are but too little in advance of what we had already learned from Dr Gray's key, we must say at the same time, that those on the books of the new testament are of a somewhat different character, exhibit a more thorough acquaintance with the subject in hand, and will be found interesting and useful to the theological student. The cause of this difference in the articles is probably to be found in the difference of attention which in England has been bestowed upon the two testaments; the *new* having been made the subject of learned speculations and of much critical investigation, while the *old* testament has been comparatively neglected. The references in the articles on the new testament to such names as Lardner, Campbell, Kuinoël, Marsh, Michaelis, &c. naturally leave the impression, however the merit of them may be estimated, that our author has not in this instance labored under the disadvantage of a want of acquaintance with the writings of men of laborious research and admirable learning. Indeed there is an intrinsic difficulty in giving a literary and critical analysis of the books of the old testament,—arising from the characteristics of the languages and the remoteness of the periods, in which they were written, from our defective acquaintance (notwithstanding the able treatises that have been written on the subject) with biblical antiquities, from our very limited knowledge of the literature, customs, mythology, &c. of the nations that bordered on the ancient Jews, and from other causes,—which is not found to an equal extent in a like investigation of those of the new testament. On a subject that has often been written about, almost any one may write; on one that is plain and easy to be understood, where is the need of vigorous argument, and

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profound investigation? It is on subjects where there are great and intrinsic difficulties, that we expect such a writer as as Mr Horne will show himself to advantage, by banishing misshapen hypotheses and substituting better ones, by discovering his acquaintance with the spirit of the age, whether more or less remote, by the suggestions, the arguments, the taste, and philosophy of a mind, powerful in itself, and instructed from the stores of ancient and modern learning. But we do not say any thing by way of complaint; the ablest and best informed minds may somtimes fail in some of their investigations, like Leibnitz, in consequence of their ambition of universal conquest. The references to be found in Mr Horne's work, of which we have already spoken, to such writers as Kuinoël, Koppe, Michaelis, and others, will justify us, we trust, in the remark which we are about to make, viz. that thorough-going biblical students have found it for their interest, and will continue to find it so, to consult those authors on the continent of Europe, who have written on subjects connected with the criticism of the bible. Of those writers, none have entered into that subject with more spirit and more success, as far as the mere literary part is concerned, than biblical critics of Germany.

The interest, with which Mr Horne's work has been received on this side of the Atlantic, is a proof, in addition to others, of the increasing zeal with which the studies, connected with the history, criticism, and interpretation of the bible, are pursued among us. We consider it a good omen, that a deep-felt interest in studies of this kind exists, and cannot but hope, that it will extend itself. The influence over the community, which in this country is exerted from the pulpit, is great; and we think that this influence will be favorable, and will have a tendency to correct the public morals, and elevate and purify the public sentiment, nearly in proportion (other circumstances being equal) to the intellectual endowments and acquisitions of those who make their appearance as public religious teachers. But there is another point of view, in which the thorough study of the scriptures may be considered as important to all well-wishers to religion, and to all who take an interest in the prosperity of literature. It will encourage and keep alive among us an acquaintance with the treasures of oriental learning. The Hebrew language is inti-

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mately connected, both as respects the meaning of particular words and its general structure, with the Syriac, Chaldee, Arabic, Ethiopic, and Samaritan; and we apprehend that, at the present day, a person is not in a condition to appear before the public, as a professed *critic* on the old testament, although he may have a generally correct understanding of it, without a respectable acquaintance with these dialects. This is the general feeling on the subject on this side of the water, and perhaps Mr Horne, with all his labor and all his learning, has given too evident indications that, with respect to an acquaintance with oriental learning, he has come to the difficult task of writing an *Introduction to the Old Testament*, with a less thorough preparation than might have been wished. But on this point we confess we are not in a situation to speak with certainty; and it is quite possible, that Mr Horne might have given us more decided proofs of his oriental learning, if the plan which he adopted in regard to his work had permitted, and if he could have done it without appearing to obtrude it unnecessarily upon our attention. A thorough acquaintance with the dialects which have been mentioned, not merely a slight initiation into them, seems to be necessary, not only in giving an account of the history and the merits of the translations, that have been made into them, but also in forming a critical estimate of the particular books of the old testament; since the elucidation of so many difficult passages depends on such an acquaintance, and a considerable portion of two of those books, Daniel and Ezra, is written, not in the Hebrew, but in the Chaldee. Probably the greatest defects in the translation of Isaiah by bishop Lowth, which is deservedly popular, arose either from his not possessing that thorough acquaintance with the dialects kindred to the Hebrew, which is usually possessed by distinguished biblical critics of the present day.

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ART. VII.—*A few Notes on certain passages respecting the Law of Nations, contained in an article in the July number of the North American Review, upon the work entitled 'Europe, by a citizen of the United States.' By the author of that work.* Boston. 1823.

THE object of this pamphlet, written by the author of Europe with his usual ability, is to maintain the correctness of certain statements and opinions advanced by him in that work, and questioned in our review of it. Our respect for his talents and learning, and the consciousness that, as our opinions carry with them no authority, it is so much the more incumbent on us to support them by reason, induce us to swerve so far from the usual practice of reviewers, as to reply to his arguments, and to state particularly the grounds of our dissent from them. If we may ever be allowed to do this, we owe it to the writer and to the subject to do it now; for there are few individuals to whom the North American Review and its readers are more indebted than to the author of Europe, and few topics more interesting in our diplomatic history than those on which we differ from him. The first is the construction of Jay's Treaty. That we may not do injustice to his remarks by misunderstanding them, we shall quote in connexion all that he says upon the subject.

'1. Of these, the one which appears to have been regarded as the most exceptionable, is contained in some remarks in the ninth chapter of the work, page 400, in which, after representing as an unwarrantable innovation on the law of nations, the claim made by Great Britain, in the year 1793, to treat provisions as an article contraband of war, I have added an expression of regret, *that this claim should have been sanctioned in a formal treaty by the government of the United States.* The reviewer, after quoting the passage, here alluded to, in the treaty with Great Britain negotiated by Mr Jay,* makes the following observations:

'* The passage in question forms a part of the sixteenth article of the treaty, and is as follows: "And whereas the difficulty of agreeing on the precise cases, in which alone provisions and other articles, not generally contraband, may be regarded as such, renders it expedient to provide against the inconveniences and misunderstandings, which might thence arise; it is further agreed, that whenever any such articles, so becoming contraband according to the existing law of nations, shall for that reason be seized, the same shall not be confiscated; but the owners thereof shall be speedily and completely

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"We supposed that there was now but one opinion among enlightened men with regard to the merits of this treaty; and that, at the present day, it was admitted, as a whole, to have been equally honorable and beneficial to our country. It is obvious that the clause above cited does not warrant the reproach cast on it, *that it did not recognise any new rule of public law*, nor sanction any usurpation on the part of Great Britain, or relinquish any national right of the United States. Literally construed and fairly applied, it is unexceptionable; tending rather to mitigate, than increase the severity of the law of nations; and the only rational objection to its policy is, that in practice it admitted and indeed almost invited abuse, by enabling England more easily and with less danger of clamorous and immediate resistance, to interrupt even our lawful commerce with her enemy, upon her paying what her own courts should deem an adequate compensation for the injury."

'The meaning of the most important phrase in this passage, which is printed in italics, is rather ambiguous. The treaty plainly admits the existence of cases, in which provisions may become contraband by the established law of nations. In saying that it does not recognise any new rule of public law, the reviewer therefore conveys of necessity to his readers the idea that he does not consider the rule, which makes provisions contraband, as a new one. As all treaties must be interpreted by reference to the circumstances under which they were concluded, the cases provided for in the article must naturally be regarded as those, about which a difference had existed between the parties; and putting this construction on the treaty, the remark of the reviewer would amount to a recognition of the legality of the British claim, to its full extent. Afterwards, however, he uses the phrase, "lawful commerce," in apparent application to the trade in provisions, which was interrupted by the claim in question. I confess that I should regret very much to believe that so learned and patriotic a writer intended to vindicate publicly this most extraordinary pretension; and as his language will admit a different, although perhaps a less natural construction, I shall consider him, when he states that the clause in question does not recognise any new rule of public law, as meaning to be understood, that there are cases, in which, by the acknowledged law of nations, provisions become contraband; that the treaty merely provides for such cases, without admitting that the one, concerning which the dispute had arisen between the parties, was of the

indemnified; and the captors, or in their default, the government under whose authority they act, shall pay to the masters or owners of such vessels the full value of all such articles, with a reasonable mercantile profit thereon, together with the freight, and also the demurrage incident to such detention."

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number; and that it mitigates instead of increasing the severity of the existing law, by determining that provisions seized in these cases shall be paid for. This is the most plausible sense that can be drawn from the reviewer's language, and is probably the one which he intended to convey. But the passage, thus understood, is liable to two weighty objections.

'1. That there are any cases, in which provisions can be fairly treated as contraband, according to the existing law of nations, is, in my opinion, a wholly untenable position, and was uniformly denied by the American government up to the time of Mr Jay's treaty. The instance of a besieged town is not in point, because all intercourse with such a place is prohibited, upon a different principle from that which interdicts the trade in contraband articles. It has probably, however, arisen from a confusion of the two cases, that a few writers have given some countenance to the idea, that provisions might become contraband in certain junctures. The attempt of Great Britain to support, on such authorities, a pretension to interrupt the whole trade of the world in provisions with one of the greatest nations in Europe, can hardly be looked upon in any other light than as a piece of solemn mockery. It seems to be regarded in this way by Klüber, a late approved German writer on national law. "If," says he "the pretensions of belligerent powers respecting contraband articles were binding on neutrals, every thing would become contraband that was worth taking. Thus Great Britain, by her order of June 8, 1793, directed the seizure of all ships bound to France with provisions."* It may be remarked, that Martens, who was quoted at the time by lord Grenville, as giving countenance to the British claim, because he stated, that in some treaties provisions were made contraband in certain cases, afterwards expunged the passage relied upon by his lordship, which is not to be found in the third edition of the work, published at Göttingen last year, a short time before the author's death.†

'The principle that provisions may be treated as contraband, was positively denied by the American government. Mr Jefferson, then secretary of state, remarks in a letter to Mr Pinckney, our minister at London, written immediately after he had received the first intelligence of the order, that *the principle supposed is so manifestly contrary to the law of nations, that nothing more would seem necessary, than to observe that it is so.*‡ And in

'* See *Klüber, Droit des gens moderne de l'Europe,* § 288, *in Not.* Since the death of Martens, Klüber is perhaps the most distinguished living writer on public law.

'† Compare Martens, first edition, § 270, with third edition, §318.

'‡ See Wait's State Papers, vol. i. pp. 218 and 324; also 327, 408, and the following pages.

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his answer to the letter of the British minister, Hammond, giving official notice of the order, he declares that the principle is *entirely new.* Mr Randolph, who about this time succeeded Mr Jefferson as secretary of state, took the same ground in his correspondence with Mr Hammond, and Mr Pinckney, in his intercourse with the British government. "*General Washington,*" says Marshall, "*was resolved on no account to acquiesce in the idea, that provisions, though not generally contraband, might in certain cases become so.*"* The motives which induced him to break this resolution by ratifying the eighteenth article of Mr Jay's treaty, will be noticed hereafter.

'I conclude, therefore, that, on the reviewer's own construction of the article, it sanctioned a new and wholly inadmissible rule of public law, and one which up to that time had been uniformly treated as such by the American government.

'2. But a second and still more weighty objection to the reviewer's observation is, that the construction of the treaty, which he has adopted, or rather which I have attributed to him, as implied by the most candid interpretation which could be put upon his language, is not the true one. The article does not merely recognise the existence of certain undefined cases, in which provisions may become contraband, without admitting that the then present case was of the number, but *must be understood upon all the fair and ordinary principles of interpretation, as acknowledging the legality of the precise claim, which had just before been made by Great Britain, of a right to interdict the whole neutral trade with France in provisions;* a claim which had previously been pronounced by the American government, as it has been ever since by all good authorities, a monstrous offence against the rights of neutrals as well as common humanity, and which is now treated, as I have shown, by approved civilians, as quite ridiculous. That this claim was recognised by the article, is unfortunately but too certain.

'The reviewer will pardon me for observing, that a *literal* construction of state papers and public documents is rarely just, and never, perhaps, when it differs from a fair and liberal one. Such instruments, and, in particular, treaties, must be interpreted, on the contrary, as I have remarked above, by reference to the circumstances under which they were concluded, without a knowledge of which they are seldom even intelligible. In this case, as in others of the same description, the negotiators met together, not to compile a general code of national law, nor to provide for undefined cases, that might never occur, but to set-

'* See Marshall's Life of Washington, vol. v. p. 619.

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tle certain important points in dispute between the two countries. One of these was the legality of the British order in council of June 8, 1793, directing the seizure of provisions bound to France, which was maintained by the British government, and denied by ours. Had the treaty contained no stipulations on the subject, we should have concluded that the point remained unsettled, and that neither party would consent to abandon its ground—as was the case in regard to several important questions at the negotiation of Ghent. Had it contained an article declaring that the trade in provisions could not be interdicted as contraband, we should of course have concluded that Great Britain had conceded the point, although the precise case of the recent claim had not been mentioned. When, on the contrary, we find an article declaring that provisions may, in certain cases, be treated as contraband—the full extent of the British claim when stated in general terms—and providing for these cases in the same way, and nearly in the same words, in which they are provided for by the order of June, it is just as obvious, that the intentions and effect of the article are to recognise the legality of this order, as if it had been quoted by its date, and formally confirmed.

'It is easy to illustrate the propriety or rather necessity of such a construction by supposing a parallel case. Let it be imagined, for an example, that the treaty of Ghent had contained an article conceived in the following terms: *Whereas the difficulty of agreeing upon the precise extent, to which, when one of the contracting parties is at war, and the other at peace, the naval officers of the belligerent party may exercise the right of entering the ships of the neutral, and carrying away wholly or in part the persons whom they find on board, renders it expedient to provide against the misunderstandings and inconveniences, which might thence arise; it is agreed that all such persons, so carried away, shall immediately be put on shore by such naval officer at the nearest port within the dominions of the belligerent party, and shall there be examined without delay by commissioners to be appointed for this purpose, and, if they are found to be the native citizens or subjects of the neutral power, shall be forthwith released and sent home at the expense of the belligerent, with reasonable compensation for detention and other damages.* Such an article would have stood in about the same relation to an undoubted principle of public law, in which the eighteenth article of Mr Jay's treaty stands to a very questionable one; and on the principle of literal interpretation, recommended by the reviewer, might have been defended as an improvement and mitigation of the existing system.* Had it been found in the treaty of

'* It might have been said, for example, that it is an acknowledged principle of public law, that the belligerent party may enter the ships of the neutral

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Ghent, it would have been interpreted, as every article in every treaty must be, by reference to the circumstances under which it was agreed to, and would have been rejected with indignation by the government and people of the United States, as a sanction of the abuse of impressment.

'*The article, therefore, which I have been considering, undoubtedly admitted the legality of the British order.* Any article upon the subject would have amounted to a recognition of this pretension to the same extent to which it did not directly exclude it; and as this contains no provision in favor of neutrals, not to be found in the order, it amounts to a complete concession. The order had been revoked on the fourteenth of August, previously to the signature of the treaty. But it is rather a curious fact, and one which strongly confirms the propriety of the construction, which I have put upon the article, that after the signature of the treaty, and before its ratification, this obnoxious pretension was revived. It is evident enough from this, that both the negotiators considered the legality of the order, as admitted by the article, since the British government would hardly have thought it worth while to sign a treaty, which they intended to violate before it was ratified.

'I think myself therefore justified in repeating, that the treaty, upon the reviewer's own construction of it, *sanctioned a new and inadmissible rule of public law; and that, upon the only fair and natural construction of it, it recognised the legality of the British order of June* 8, 1793. Such an admission I thought and still think a legitimate subject of regret, with every friend of justice and humanity, and every citizen of the United States.

'In regretting the admission of this article into the treaty, I have not, however, cast any censure upon the administration, which negotiated it, nor have I expressed any disapprobation of the treaty, as a whole; although both the reviewer, and the author of the pamphlet (judging of the latter from the title) seem to charge me with so doing. A treaty may be excellent as a whole, and yet contain one or more unfortunate articles. In

and carry away all persons in the actual military or naval service of the enemy to be found there, that the article here supposed, as it only recognises acknowledged principles must be understood, *literally construed and fairly applied*, as simply confirming this right, and as not touching the doubtful question, whether the belligerent party has a right to carry away its own subjects, and that the subsequent provisions are consequently a mitigation of the existing law. This is the mode of reasoning adopted by the reviewer in regard to the eighteenth article of Mr Jay's treaty, and the argument is stronger in the case supposed, than in his, for the reason stated in the text. No candid man, however, can doubt that an article, like that supposed in the text, would have sanctioned the claim of impressment; *and it is equally evident that the eighteenth article sanctioned the legality of the order of June.*

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fact, the gentlemen, who make this charge against me, appear to have overlooked or forgotten the facts—which, however, rest upon no more distant authority, than that of Marshall—that the particular article of Mr Jay's treaty, to which I have objected, was also at the time considered objectionable by the government; that the president was doubtful whether he should ratify it, and had apparently at one time made up his mind not to do so; that it probably would never have been ratified, but on the contrary expunged from the treaty, had not the ratification of the whole instrument, as it stood, been precipitated by accidental causes; and finally that the ratification was accompanied by a memorial in regard to this article, disavowing the principles recognised by it, and amounting in substance to a refusal to ratify it. These facts are either directly asserted by the chief justice, or follow in necessary conclusion from the tenor of his narrative, which is briefly thus:*

'"The president," he informs us, "after some hesitation and deliberation upon the subject of the treaty, had concluded to ratify the whole instrument as it stood, if it should be approved by the senate. But while it was under consideration in this body, intelligence was received of the renewal of the provision order, (mentioned above.) The president apprehended that this renewal might be construed and intended as a practical construction of that article in the treaty, which seems to favor the idea that provisions, though not generally contraband, may in certain cases become so—a construction in which he had determined not to acquiesce—and thought it wise in consequence to reconsider his decision."

'Now, as the article in question does not *seem to favor* the idea, but actually affirms, in so many words, that provisions, though not generally contraband, may in certain cases become so,† and must be understood on fair principles of construction, as admitting the legality of the British order, it is clear that the president, if, as we are informed by Marshall, he had determined not to acquiesce in this admission, must also have determined not to ratify this article of the treaty. At all events, he wholly rejected the principle, which the reviewer declares not to be a new rule of public law. The chief justice pursues his narrative as follows:

'"Of the result of this reconsideration there is no conclusive

'* See Marshall, as quoted above; and the following pages.

'† The phrase, which appears in the body of this article in a conditional form, when stated in that of a direct affirmation, is as follows: *Provisions and other articles not generally contraband, may in certain cases become so according to the existing law of nations.* It is not too much, I think, to say of this phrase, as Hamlet does of himself, that *it knows not seems.*

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testimony. A strong memorial against this objectionable order was directed: and the propositions to withhold the ratifications of the treaty until the order should be repealed; to make the exchange of ratifications dependent upon that event; and to adhere to his original purpose of pursuing the advice of the senate, connecting with that measure the memorial which had been mentioned, as an act explanatory of the sense in which his ratification was made, were severally reviewed by him. In conformity with his practice of withholding his opinion on controverted points, until it should become necessary to decide them, he suspended his determination on these propositions until the memorial should be prepared and laid before him. In the mean time his private affairs required that he should visit Mount Vernon."

'The biographer then enters at considerable length into an account of the opposition to the treaty that displayed itself throughout the country; after which, he describes the circumstances under which the resolution to ratify was finally taken in the following manner:

'"In the afternoon of the 11th of August, the president arrived in Philadelphia; and on the next day the question respecting the immediate ratification of the treaty was brought before the cabinet. The secretary of state maintained singly the opinion that during the existence of the provision order, and during the war between Britain and France, this step ought not to be taken.

'"This opinion did not prevail. The resolution was adopted to ratify the treaty immediately, and to accompany the ratification with a strong memorial against the provision order, which should carry in explicit terms the sense of the American government on that subject. By this course the views of the executive were happily accomplished. The order was revoked and the ratifications of the treaty were exchanged. The president was most probably determined to adopt this course by the extreme intemperance with which the treaty was opposed, and the rapid progress which this violence was apparently making. It was obvious, that unless this temper could be checked, it would soon become so extensive, and would arrive at such a point of fury, as to threaten dangerous consequences. It was obviously necessary either to attempt a diminution of its action by rendering its exertions hopeless, and by giving to the treaty the weight of his character and influence, or to determine ultimately to yield to it. A species of necessity, therefore, seems to have been created for abandoning the idea, if it ever was taken up, of making the ratification of the treaty dependent on the ratification of the provision order."

'It does not appear that this memorial has ever been published, and we are of course unacquainted with its precise tenor.

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The chief justice represents it as a remonstrance against the renewal of the order—describes the eighteenth article of the treaty as only *seeming to favor* a principle, which it really asserts in terms —and does not state expressly, that the government ever intended not to ratify the article. As we cannot, however, suppose that president Washington and his cabinet could be mistaken in the meaning of an English phrase, so short and simple as the one alluded to, it is more probable that they intended originally not to ratify the article; but that the ratification of the treaty as it stood, having become desirable on account of the circumstances related by the chief justice, they substituted for a refusal to ratify the article a memorial against its practical enforcement. However this may be, the order, as I have previously shown, was really authorized by a fair and natural construction of the eighteenth article, and a memorial against it was consequently in substance a disavowal of the article itself. In expressing my regret at the admission of this article into the treaty, I have therefore cast no censure whatever on the government, which certainly viewed it in the same light that I do. The reviewer, on the contrary, censures the government by implication, when he undertakes to justify a principle, which they considered so objectionable, that they refused in substance to ratify it, although from accidental causes it still retains its place in the treaty.'

It must here be observed, that the question between us is not whether this clause of the treaty be in any manner objectionable; for its liability to abuse is stated in the review, as one specific objection to it, and after reading this pamphlet, we readily admit as another, its liability to misconstruction. But did it sanction the first article of the British order in council of June, 1793, which authorized the capture of neutral vessels carrying corn, meal, or flour to any port in France? The affirmative is the position which is assumed in the work entitled Europe, and repeatedly and confidently reiterated in the pamphlet before us; and which we then ventured and still venture to deny.

The inference, that because the treaty admits the existence of cases, in which provisions may become contraband, therefore the reviewer, in saying that it does not recognise any new rule of public law, conveys of necessity the idea, that he does not consider the rule, which makes provisions contraband, as a new one, seems to us neither natural nor just. A rule, which in general terms should make provisions contraband, would indeed be a new one, and even more extravagant than

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the British order in council; for thus unqualified, it must signify that they are commonly so. The difference between such a rule, and the admission that there are cases, in which provisions and other articles *not generally contraband*, may be regarded as such, is in our opinion sufficiently obvious to be perceived and acknowledged without any remarkable astuteness or candor. This last position is that assumed in the treaty, and it is still believed to be no new rule of public law, but as ancient as the law itself.

That there are any cases, in which provisions can fairly be considered as contraband, is deemed by this writer a wholly untenable position; and one which he thinks to have been uniformly denied by the American government up to the time of Mr Jay's treaty. He considers the instance of a besieged town not in point 'because all intercourse with such a place is prohibited upon a different principle from that which interdicts the trade in contraband articles.' Without stopping to inquire what this different principle can possibly be, it is enough to remark, that it is altogether immaterial to the present question, upon what principle neutrals are prohibited by the law of nations from carrying provisions and other articles to a blockaded port. If they are in fact so prohibited, such articles are in that case contraband. One cause of the difference of opinion between us and the learned author may be, our employing the same word with a slight difference of signification. The term contraband is sometimes used without qualification, and in its strictest sense, to denote the mere implements of war, which a neutral is entirely prohibited from carrying to any part of a belligerent country; and the assertion that provisions are not and cannot be contraband in this sense, is incontrovertible. This signification is expressly given it in Mr Jefferson's letter to Mr Pinckney of Sept. 7, 1793; where he defines contraband to mean mere implements of war, and in this sense it is obviously used by chief justice Marshall, when he says that Jay's treaty seemed to favor the idea, that provisions may in certain cases become contraband; and that the president was determined not to acquiesce in this construction of it. In its more general sense, however, the term includes every article which a neutral is under any circumstances forbidden by the law of nations from carrying to a belligerent port. This we take to be its true meaning in that clause of the treaty now

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under consideration, and in this sense provisions and other articles not generally contraband, may in certain cases be regarded as such; especially when destined to ports actually blockaded. This position is abundantly supported by the following authorities.

Bynkershoek says 'Omnes res obsessis subvectæ habendæ sunt pro contrabandis.'*

Vattel, after defining contraband goods, adds 'Telles sont les armes, les munitions de guerre, les bois, et tout ce qui sert à la construction et à l'armement des vaisseaux de guerre, les chevaux, et les vivres mêmes en certaines occasions.'†

Valin, having remarked that Loccenius and the Danish law lay down the rule that provisions are prohibited as contraband, goes on to say; 'mais par nos loix et de droit commun elle n'a lieu en cette partie que par rapport aux places, assiégées ou bloquées;' and cites the Spanish commentator D'Abreu and L'Observateur Hollandois, as according with him in this opinion.‡

Pothier observes, 'a l'égard des munitions de bouche que des sujets des puissances neutres envoient à nos ennemis, elles ne sont point censées de contrabande ni par conséquent sujettes à confiscation, sauf dans un seul cas, qui est lorsqu' elles sont envoyées à une place assiégée ou bloquée.'‖

The French ordinance of 1794 contains this article, 'Sont compris sous le nom de marchandises prohibées ou de contrabande, les armes, instrumens et munitions de guerre quelles qu'elles soient, les chevaux et leurs équipages, et toute espèce d'effets, denrées ou marchandises destinées pour une place ennemie actuellement assiégée, bloquée ou investie.'§

Chief Justice Parsons, in the guarded and elaborate opinion of the court pronounced by him in the case of Richardson against the Maine Insurance Company, thus defines contraband goods.

'Goods contraband of war are of two descriptions:—munitions of war, the property of a neutral, bound from a neûtral port to the territory of either of the belligerents, after the existence of the war is known:—and every species of neutral goods bound from a neutral port to a port belonging to either

*Quest. jur. pub. b. 3. c. 11. † Droit des gens. l. 3. c. 7. S. 112.
‡ Ord. de la Marine, b. 3. tit. 9. Art. 11. ‖ De Propriété. No. 104.
§ 3 Code des Prises, 217.

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of the powers at war, and known to be blockaded by the other power. The principle therefore on which a belligerent will capture, and condemn as prize, the goods of a neutral, bound to a port known by him to be blockaded, arises from the consideration, *that all such goods are contraband of war.*'*

Judge Story, in delivering the opinion of the supreme court of the United States in the case of the Commercen, remarks, 'That by the modern law of nations, provisions are not, in general, deemed contraband; but they may become so, although the property of a neutral, on account of the particular situation of the war, or on account of their destination. If destined for the ordinary use of life in the enemy's country, they are not in general contraband; but it is otherwise if destined for military use. Hence if destined for the army or navy of the enemy, or for his ports of naval or military equipment, they are deemed contraband.'†

Mr Jefferson, secretary of state, in his letter of Sept. 22, 1793, to Mr Hammond, the British minister, relating to this order in council of June preceding, says, 'That all provisions are to be considered as contraband, in the case where the depriving an enemy of these supplies is one of the means intended to be employed; or in any case *but that of a place actually blockaded*, is a position entirely new.'‡

Mr Randolph, his successor, on the 1 May, 1794, addressed a long letter to the same minister on the same subject, containing the following passage. 'If by a circuit of construction, food can be *universally* ranked among military engines,—what article, to which human comfort of any kind can be traced, is not to be registered as contraband? *In some peculiar circumstances, it must be confessed, corn, meal, and flour are so;* as in a blockade, siege, or investment.'§

We cannot find, in Mr Jefferson's letters to Mr Pinckney and Mr Hammond, the remarks which this pamphlet professes to cite from them. In the former, he does not say '*The principle supposed,*' (meaning thereby, as the reader would imagine, the principle stated in the pamphlet as introductory to the quotation,) but '*This article*' (referring directly to the first article of the order in council of June, 1793) '*is so manifestly contrary to the law of nations, that nothing more would*

* 6 Mass. Rep. 114.
† 1 Wheat. Rep. 388.
‡ 1 Wait's State Pap. 324.
§ 1 Wait's State Pap. 419.

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seem necessary than to observe that it is so.' The passage alluded to in his letter to Mr Hammond, as declaring that '*the principle is entirely new,*' is that which we have cited above. Our readers will now judge whether either of these expressions gives any countenance to the position, in support of which they are adduced; that provisions cannot in any case be fairly treated as contraband. The sentence printed a few lines below in italics, as from Marshall, is more correctly cited afterwards in connexion with its context.

It cannot be deemed unwarrantable to assert, in conformity with these authorities, that provisions, and other articles not generally contraband, become so when destined to ports blockaded, besieged, or invested. These are indeed the common cases, in which they become so; and by many writers are said to be the only ones. But there is very high authority for maintaining that there are others also; that naval stores may be treated as contraband if bound to a port of naval equipment; and provisions whenever they are destined to supply the fleet or army of one belligerent engaged in a hostile expedition against the other. The first ordinance of the American congress on this subject in the revolutionary war contains the following provision. 'All vessels to whomsoever belonging that shall be employed in carrying provisions or other necessaries to the British army or armies or navy, that now are, or shall hereafter be, within any of the united colonies, or any goods, wares, or merchandise for the use of such fleet or army, shall be liable to seizure, and with their cargoes shall be confiscated.'* In our last war, the supreme court of the United States decided that a neutral was not entitled to freight for goods destined to supply the British army, even on the continent of Europe, on the ground that this was prohibited by the law of nations. It should be stated however that there was a difference of opinion in the court as to carrying the rule to this extent.

The authorities above cited do not in any manner countenance the monstrous pretension set up by the British order in council of June, 1793, to interdict the trade in provisions with France; but they do show that it is not recognising any new rule of public law to admit that there are cases in which provisions and other articles, not generally contraband, may be

*5 Wheat. Rep. Appendix 103.

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deemed so; and further, that the cases of blockade, siege, or investment are such.

But is this the true construction of the treaty? Does it apply, as its terms plainly import, to cases in which provisions and other articles, not generally contraband, may be regarded as such, according to the existing law of nations? or must it be understood, as the author of Europe maintains, to acknowledge the legality of that flagrant violation of international law, the order of June, 1793? It is readily admitted, that a literal interpretation of public documents ought never to be preferred to a fair and liberal one. In construing a treaty we ought undoubtedly to affix to every expression the signification, which the parties intended to give it, at the time of making the compact; and the circumstances under which it was made may properly be considered, in order to ascertain that intention. But after all, the best evidence of their meaning is their language, which must receive its obvious and usual interpretation, unless it be manifest that the parties intended to give it a different sense. The writer himself informs us, that the order in council was repealed more than three months before the conclusion of the treaty; and of course it was not at that time a point in dispute between the two countries. And how, under any circumstances, could the mere fact, that the treaty contains a stipulation relating to the subject, warrant the conclusion, that it must be so interpreted as to amount either to an abandonment or a recognition of the whole British claim? It may have been the object of the parties to determine in what manner provisions and other articles, not generally contraband, should be dealt with in cases, when they should become so, without defining what those cases were; but leaving that question to be settled by the existing law of nations. This is the plain import of their language, and we cannot avoid the conviction, that it was at least the clear intent of the American negotiator, and known to be so by the British at the time; and in this case it was not competent for Great Britain to set up a different construction afterwards. The renewal of the order, indeed, after the signature and before the ratification of the treaty, looks like an attempt on her part to give it the construction contended for by this writer, sanctioning that order. But if it was so, it was a mere artifice, and an unsuccessful one; for the immediate remonstrance

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of the American government against this renewal was a protest against that construction, and the consequent repeal of the order, by the British, an abandonment of it; which, in our opinion, destroys all pretext for reasserting it now. If, by calling the admission that provisions may in certain cases be treated as contraband the full extent of the British claim when stated in general terms, it is meant to assert that this general proposition does warrant the claim, set up by the order of 1793, to interdict the trade in provisions with France, this is the very question in controversy, and cannot be assumed. Admitting that there are such cases, is not of itself, surely, an admission that the situation, in which France then stood, was one of them. The letters of Mr Jefferson and Mr Randolph above cited, in which they allow provisions to be contraband in cases of actual blockade, siege, or investment, at the same time deny this claim of Great Britain; and they do not seem to us chargeable with any inconsistency in so doing.

The idea of illustrating this article of the treaty of 1794, by a parallel case, is ingeniously conceived, but not, we think, aptly executed. The stipulation imagined, does not expressly limit the belligerent's right of seizing persons on board the ships of the neutral to cases, in which this may be done according to the existing law of nations, but, on the contrary, supposes the seizure even of the citizens and subjects of the neutral power, by providing, that when seized they shall, on examination, be liberated, and directly authorizes, not only the seizure but the detention of all other persons, including of course the subjects of the belligerent and even of other neutral powers; all which is incompatible with the principles of public law; whereas the treaty of 1794 does not in terms authorize the seizure of provisions and other articles not generally contraband, excepting in cases, when by the existing law of nations they become so. The suggestion of this parallel, however, is so happy a thought, that we cannot refrain from pursuing it, and producing, in our turn, an article on the subject of impressment, resembling the provision of the treaty of 1794, so far as the present question is concerned, more nearly than that feigned by our learned friend; inasmuch as it does not omit, like that, the clause of express reference to the existing law of nations, the precise point on which the whole controversy turns.

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'No seaman, seafaring or other person, shall, upon the high seas and without the jurisdiction of either party, be demanded or taken out of any ship or vessel, belonging to the citizens or subjects of one of the parties, by the public or private armed ships belonging to or in the service of the other party; and strict and effectual orders shall be given for the due observance of this engagement; but it is to be understood that *this article shall not exempt any person on board the ships of either of the parties, from being taken therefrom by the other party, in cases where they may be liable to be so taken, according to the laws of nations;* which liability, however, shall not be construed to extend in any case to seamen or seafaring persons, being actually part of the crew of the vessel, in which they may be, nor to persons of any description, passing from one port to another port of either of the parties.'*

What says the learned author to this article? That it would in any manner sanction the abuse of impressment? We know his answer. He is too well versed in our diplomatic history to be ignorant, that in the year 1804, when Great Britain not only claimed the right of impressment from American vessels, but was constantly enforcing the claim, when this was a subject, and the chief subject of controversy between the two countries, the American minister in London, Mr Monroe, was authorized to propose this very article to the British government; and that Mr Madison, secretary of state, in his letter inclosing it, says, 'You will observe, that this guards in all cases the crews of our vessels from being meddled with, and, in referring for an exception to the immunity on board our vessels to the law of nations, yields no principle maintained by the United States, *inasmuch as the reference will be satisfied by the acknowledged exception of enemies in military service.*'†

According to the reasoning of our author, was not this a mere subterfuge? Might it not have been said, if this article had been adopted, that it must be interpreted to sanction the whole pretension of the British? Should we not be told, 'that the negotiators met together, not to provide for undefined cases, but to settle important points in dispute between the two countries:—that one of these was the right of Great Britain to impress her subjects on board American vessels, which

* 5 Wait's State pap. 360. † 5 Wait's State pap. 368.

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was maintained by the British government and denied by ours :—that when therefore we find an article admitting that persons may in certain cases be taken by the British from American ships, the full extent of the British claim when stated in general terms ; the effect of this article is to recognise the legality of impressment, as much as if it had been formally confirmed ;—that any article upon the subject would have amounted to a recognition of this pretension to the same extent to which it did not directly exclude it ; and as this excludes it only in two specified cases, it completely sanctions it in every other?' So did not reason Mr Jefferson and his cabinet ; for assuredly they would never have proposed this article, had they dreamed that it would give the shadow of a sanction to the abuse of impressment.

The renewal of the order of 1793, after the signature and before the ratification of the treaty, does not make it evident to our apprehension that *both the negotiators* considered the legality of the order as admitted by the article. It may show that the British government wished to put this interpretation on it, but surely it does not prove that it was adopted by the American. On the contrary, when it appears that our government, on learning the renewal of this order, protested against it, and that the British then again repealed it, this is a plain assertion, on the one part, and admission on the other, that it was not sanctioned by the treaty.

The whole history of the events attending the ratification of the treaty, as cited from Marshall, confirms, instead of shaking our opinion. The interpretation, which would render the treaty a formal sanction, by the American government, of the order of 1793, seems to have no countenance in this narrative, but what it derives from a single expression misunderstood. We are informed that the president had concluded to ratify the whole instrument as it stood, but that, on receiving intelligence of the renewal of the provision order, he apprehended that this renewal might be construed and intended as a practical construction of that article in the treaty which seems to favor the idea, that provisions, though not generally contraband, may in certain cases become so, a construction, in which he had determined not to acquiesce, and thought it wise, in consequence, to reconsider his decision.

Is it not a mistake to suppose that the term contraband is

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used in this sentence with the same broad signification as in the treaty? Is it not here used in its strictest sense, as embracing only munitions of war? And was not the idea that provisions might, in some cases, be regarded as munitions of war, and so their exportation to every part of a belligerent country be interdicted, that which the president deemed so inadmissible? We think these questions must be answered in the affirmative, because taking the term in its more general acceptation, as used in the passages cited above, it never could have been considered inadmissible, but had in fact been admitted both by Mr Jefferson, secretary of state, and by his successor, in their official correspondence on the subject; and because the only practical construction, which the renewal of the provision order could have a tendency to put upon the treaty, was one, by which that order should be sanctioned; and this must have been a different one from that, which Washington himself had put upon it, when he determined to ratify it as it stood.

We must suppose that Marshall understood the term not to bear in the treaty the same sense in which he used it, or else we must admit, as is alleged in this pamphlet, that he describes this article as only seeming to favor a principle, which it really asserts in terms; and also, that if the president had determined not to acquiesce in this construction, he could not have determined to ratify the treaty as it stood; the two propositions being inconsistent. Yet does the historian positively and explicitly assert them both, in immediate connexion with each other. When it was perceived by this ingenious writer, that the necessary consequence of *his* construction of the treaty was, to make it appear that Chief Justice Marshall had so far mistaken the meaning of a short and simple English phrase, as to declare that it only seemed to favor the idea of a proposition, which it actually affirmed in so many words, and had involved himself in a direct contradiction, all in the short compass of two sentences, did it not suggest itself to his imagination, that perhaps that construction might be erroneous?

Nor is this the worst. Adopting this construction of the treaty, supposing that it formally sanctioned the order of 1793, we should be compelled to think Washington and his cabinet no less inconsistent than the historian. It was the renewal of that order, which induced him to reconsider his decision, and which

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changed the opinion of the secretary of state; for Marshall states that before the account of this renewal the secretary was in favor of ratifying the treaty, though afterwards opposed to it. Now why consider the renewal of the provision order any objection to the treaty; why apprehend that it might be intended to put a practical construction, deemed inadmissible, on the eighteenth article; if this article would in truth and fairness bear but one construction, and that recognising the legality of the order? Why entertain the proposition to make the repeal of the order the preliminary or the condition of ratifying a treaty, by which that order was to be formally sanctioned? Why prepare a memorial as an act explanatory of the sense, in which the ratification of the treaty was made, if the only sense, which could fairly and naturally be put on it, was a confirmation of the whole pretension of the British?

If the American government, being willing on the whole to ratify the treaty as it stood, but fearing that an erroneous construction might be put upon it, and one in which they were determined not to acquiesce, accompanied their ratification of it with a memorial, setting forth what they considered to be its true meaning, in order to prevent any subsequent misunderstanding, this was a candid and dignified precaution. But any attempt to avoid the effect of ratifying the treaty by a secret memorial disavowing its only fair and natural construction would, in our opinion, have been altogether unworthy of the president and the nation; at once unmanly and unavailing. We cannot therefore admit the assertion to be correct, '*that the memorial against the provision order was in substance a disavowal of the eighteenth article of the treaty, and a refusal to ratify it, although from accidental causes, it retains its place in the treaty.*' But if it be so, and that article was not in fact ratified, then there is the less reason for the friend of justice and humanity to regret that the provision order was sanctioned by the American government in this treaty; since it assuredly contains no other article, which can possibly be interpreted into such a sanction.

The next subject, on which we have the misfortune to differ from this accomplished writer, is thus commented on in these Notes.

'II. The next passage in the review, which I propose to notice, is the following:—"The position, taken in this work, that it

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was an unwarrantable pretension of England to hold, that enemy's property on board of neutral ships is good prize, cannot be maintained. This is the settled law of nations, and is uniformly enforced by the United States."

'It may be sufficient to observe, in answer to this passage, that no such position, as the one alluded to, is taken in the work. I stated, on the contrary, expressly, that "according to the maritime code of public law, the right of plundering the private property of enemies may be exercised upon such property in the hands of third persons," p. 399; in other words, that enemy's property on board of neutral ships is good prize. Without attempting to balance authorities on the subject, I have stated this to be the principle now in force, on the simple ground that it is the British construction, and that the construction of national law adopted by the dominant powers by sea and land must always be regarded for the time being as the only valid one. I have represented this principle as unreasonable and inhuman, but still as a part of the existing law, as the reviewer may easily satisfy himself, if he will take the trouble of reading over the chapter.

'But although I have considered the British doctrine as a part of the existing system of public law on the ground that this law is a thing rather of fact than right, and determined for the time being, by the practice of the dominant powers by sea and land, I cannot quite agree with the learned critic in regarding it as the *settled* law of nations, or in thinking that it is uniformly enforced by the United States.

'There is in fact no question in public law upon which authorities of all kinds are more at variance. The *Consolato del Mare*, an anonymous work on maritime law, compiled at the epoch of the crusades, but still occasionally quoted in the prize courts, recognises this principle. It was also confirmed by most of the treaties concluded previously to the middle of the seventeenth century. At that time it may perhaps have been fairly considered as *settled*. On the other hand, most of the treaties since concluded, establish the contrary doctrine. During the American war, the latter was formally agreed to by the United States, and by all the powers of Europe excepting Great Britain; and, soon after the close of that war, Great Britain herself recognised it in her commercial treaty with France. If then we admit, with the reviewer, that nations may alter the established law by consent and treaty, I do not see how it can be easily denied that the doctrine of *free ships, free goods*, had become, in its turn, a settled principle previously to the war of the French revolution. Unless too we admit that a single nation can make and unmake the law at pleasure, I see not how the subsequent refusal of Great

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Britain to acknowledge the modern principle, in which she has not been followed by the other powers, can be regarded as re-establishing the old law. On grounds of *right*, therefore, I conceive that the weight of authority is in favor of the modern principle; and it is only because I have treated the whole system of public law as existing in *fact* rather than of *right*, that I have been led to represent the antiquated principle as the one now in force.

'That this principle has been uniformly enforced by the United States, is also, in my opinion, a very hazardous assertion. That it has *ever* been enforced by them is a fact of which I was before ignorant; but I willingly take for granted, that the reviewer has some authority for this statement. *It was certainly however not enforced in the revolutionary war.* Mr Pinckney observes in his note to lord Grenville of July 22, 1793, "In the last war, the Americans adopted and carried into effect the principle of *free ships, free goods*, to the advantage of British subjects, having actually liberated several British cargoes captured on board of neutral vessels."* Nor has the ancient doctrine been uniformly maintained in theory by our government. On the contrary, the modern principle was confirmed by all their treaties previous to Mr Jay's:† and it was one of the valid objections to this treaty that it sanctioned the attempt of Great Britain to restore, from motives of mere rapacity, the principle which she herself and every other christian power had just before agreed to alter. I know of no other treaty ever concluded by the United States, in which the antiquated doctrine is revived. A few *dicta* that favor it may be found in the correspondence of some of the persons employed in the government, about the time when Mr Jay's treaty was concluded, particularly in that of Mr Pickering. Taking the state papers through, a far greater number will be found on the other side. The conclusion from the whole is, that the American government, instead of having uniformly enforced the ancient doctrine, *have, on the contrary, uniformly enforced and maintained the modern one, excepting in a single case* when a different policy was enjoined upon them by strong reasons of state.'

'* See the State papers, as quoted above.

'† The treaties with France, Holland, Prussia, and Sweden expressly stipulate the principle that free ships make free goods. Mr Jay's treaty with England, which is the next in order, admits the contrary one. The former, however, appears again in the treaty with Spain concluded the next year, in the new treaty of 1800 with France, and in the late treaty with Sweden. In the new treaty with Prussia, negotiated by the present secretary of state, the article was not revived, but the whole subject was referred to a future negotiation, with an evident inclination however to the modern principle, and these are all the treaties, I believe, in which this matter is mentioned; and if we consider the second treaty with Prussia as doubtful, there are seven authorities for the modern construction, and one only for the ancient.

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We are mistaken, it seems, in supposing this writer to maintain that it was an unwarrantable pretension of England, to hold that enemy's property on board of neutral ships is good prize. As an apology for this mistake, we would observe; that his repeatedly styling this claim a pretension of Great Britain, conveyed to us the impression that he thought it only a pretension, and not her clear right. The account given by him, in these very Notes, of the course of his reasoning in his work on Europe is as follows: 'After expressing my unqualified disapprobation of the rule of 1756, and stating that the government entertained the same opinion of it, I observe that from motives of moderation and policy they had declined asserting, by violent measures, the full extent of their rights as a neutral power, but had acquiesced in such belligerent pretensions, as did not violate too directly the national honor and independence, giving as examples of this sort the rule of 1756, and the claim to seize enemy's property on board of neutral ships.' This appears, even now, to be a pretty plain intimation that he considers the claim as violating in some sort, if not too directly, the national honor and independence, and as worthy to be ranked in this respect with the rule of 1756. We consider it however no violation of our national honor or independence at all, but a settled principle of the law of nations, and one which the United States uniformly enforce as such. The language of these Notes is so perfectly explicit, that we cannot again be mistaken in supposing the writer to say that he was ignorant of the fact that this principle had *ever* been enforced by the United States—and that it was certainly not enforced in the revolutionary war—and, to conclude, that on the contrary, the United States have uniformly enforced and maintained a different doctrine, excepting in a single case.

Our assertion, that this principle of the law of nations is uniformly enforced by the United States, was not and did not profess to be founded on the treaty of 1794; nor is the circumstance that several of our treaties contain a different provision any evidence against it. For though treaties often contain articles merely declaratory, this is not their only nor even their principal object, and therefore the insertion of any provision in a treaty is not of itself proof that the contracting parties deem it a part of the existing law of nations. It may

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be merely the rule, by which they agree to regulate their intercourse with each other. This is still more apparent in the present case, from the consideration that the United States have, by different treaties, made different stipulations in relation to this subject. The treaty with Great Britain of 1794 declares the goods of enemies on board of neutral ships to be lawful prize. Our treaties with France, Sweden, and Holland stipulate that free ships shall make free goods, and that hostile ships shall make hostile goods; in effect that the character of the ship shall in all cases determine that of the cargo. The treaty with Prussia of 1785, and that with Spain of 1795, provide simply that free ships shall make free goods, without establishing the converse, thus leaving neutral property on board an enemy's ship exempt from capture. The treaty with Prussia of 1799 contains the following article:

'Art. 12. Experience having proved that the principle adopted in the 12th article of the treaty of 1785, according to which free ships make free goods, has not been sufficiently respected during the two last wars, and especially in that which still continues, the two contracting parties propose, after the return of a general peace, to agree either separately between themselves, or jointly with other powers alike interested, to concert with the great maritime powers of Europe such arrangements and such permanent principles, as may serve to consolidate the liberty and the safety of the neutral navigation and commerce in future wars. And if in the interval either of the contracting parties should be engaged in a war, to which the other should remain neutral, the ships of war and privateers of the belligerent power shall conduct themselves towards the merchant vessels of the neutral power, as favourably as the course of the war then existing may permit, observing the principles and rules of the law of nations as generally acknowledged.'

Admitting this article to show an evident inclination to establish the rule that free ships make free goods; it exhibits at the same time, we think, an evident opinion that it was not already established, either by common practice, or by general acknowledgment. In the treaty with Spain of 1819, it is agreed, that 'if either of the two contracting parties shall be at war with a third party and the other neutral, the flag of the neutral shall cover the property of enemies whose government

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acknowledge this principle, and not of others :'—a limitation sufficiently indicating that our government do not consider this principle to be a part of the law of nations, and as such universally binding.

In order then to determine what is the principle of public law enforced by the United States, we must inquire, not what stipulations are contained in their treaties, for these are various, but what is the rule applied by them to those nations, with whom they have made no stipulation on the subject, and towards whom therefore they are bound to conduct themselves according to the established law of nations. They uniformly condemn the goods of enemies found in neutral ships. We speak of their present practice, not of their past history. But the same rule was enforced during the greater part of the revolutionary war, and Mr Pinckney, in his note to Lord Grenville, did not mean to say the contrary. The well known fact, to which he alludes, is the publication of instructions to captains of armed vessels by Congress on the 7th of April, 1781, prohibiting them from capturing enemies' goods on board neutral ships. These instructions were prepared in consequence of a secret vote of Congress adopting the principles of the armed neutrality, and remained in force till the close of the war. But the ordinance previously existing, and which they in effect repealed, authorized the capture of all vessels, goods, wares, and merchandises, belonging to the crown of Great Britain or its subjects, and such property found on board of neutral ships had always been condemned. The short interval between the publication of those instructions and the termination of hostilities, is the only period in which the rule, that free ships make free goods, was ever adopted as law by the United States. Since that time, in all cases not otherwise provided for by express compact, the rule, that the goods of enemies found on board neutral ships are good prize, has been, and it still is, uniformly enforced by them.

The passages in the state papers, showing that the United States maintain this rule to be a principle of the law of nations, are too much disparaged, when they are spoken of as 'a few *dicta* favoring it in the correspondence of some of the persons employed in the government.' In July, 1793, the French minister, M. Genet, addressed an official communication to Mr Jefferson, secretary of state, informing him that the proper-

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ty of French citizens had been captured by the British on board merchant vessels of the United States, in violation of the principle that friendly vessels make friendly goods, and demanding that the government should assert its neutrality and require the property to be restored. The government refused to interfere, as appears by Mr Jefferson's answer of the 24th of July, the whole object of which is to justify this refusal. '*I believe*,' says he, '*it cannot be doubted* but that, by the general law of nations, the goods of a friend found in the vessel of an enemy are free, and the goods of an enemy found in the vessel of a friend are lawful prize. Upon this principle, I presume, the British armed vessels have taken the property of French citizens found in our vessels, and I confess *I should be at a loss on what principle to reclaim it.* It is true, that sundry nations desirous of avoiding the inconveniences of having their vessels stopped at sea, ransacked, carried into port, and detained, under pretence of having enemies' goods on board, have in many instances introduced, by their special treaties, another principle between them, that enemy bottoms shall make enemy goods, and friendly bottoms friendly goods; a principle much less embarrassing to commerce, and equal to all parties in point of gain and loss; but this is altogether the effect of particular treaty, controlling in special cases the general principle of the law of nations, and therefore taking effect between such nations only as have agreed so to control it.'*

The letter of the same secretary to the American minister at Paris, on the 16th August following, is written with the greatest care, being intended as an official vindication of the conduct of the government towards M. Genet, and has been considered a model in diplomacy. It contains a formal argument in favor of the same position.

'5. Another source of complaint with M. Genet has been, that the English take French goods out of American vessels, which, he says, is against the law of nations, and ought to be prevented by us. On the contrary we suppose it to have been long *an established principle of the law of nations, that the goods of a friend are free in an enemy's vessel, and an enemy's goods lawful prize in the vessel of a friend.*' And speaking of the stipulation, that free ships make free goods,

* 1 Wait's State pap. 110.

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and enemy ships enemy goods, he adds, 'As far as it has been introduced it depends on the treaties stipulating it, and forms exceptions, in special cases, to the general operation of the law of nations.'*

We suspect the assertion, that, taking the state papers through, a far greater number of passages will be found on the other side, to have been made inadvertently; at least it has not been our fortune to find them. Mr Madison, in his instructions to our ministers in London, dated May 17, 1806, says, that '*the United States have not asserted the principle, that a neutral flag covers the property of an enemy, as the established law of nations, but they have ever been anxious to see it made a part of that law.*'†

In the celebrated case of the Nereid, decided in 1815, the opinion of the supreme court of the U. S., delivered by Chief Justice Marshall, contains the following passages. 'The rule, that the goods of an enemy found in the vessel of a friend, are prize of war, and that the goods of a friend, found in the vessel of an enemy, are to be restored, is believed to be a part of the original law of nations, as generally, perhaps universally acknowledged. Certainly it has been fully and unequivocally recognised by the United States. This rule is founded on the simple and intelligible principle, that war gives a full right to capture the goods of an enemy, but gives no right to capture the goods of a friend.'—'The character of the property, taken separately and distinctly from all other considerations, depends in no degree upon the character of the vehicle in which it is found.'—'The celebrated compact, called the armed neutrality, attempted to effect by force a great revolution in the law of nations. This attempt failed, but it made a deep and lasting impression on public sentiment.'—'From that epoch to the present, in the various treaties which have been formed, some contain no article on the subject, and consequently leave the ancient rule in full force. Some stipulate that the character of the cargo shall depend upon the flag, some that the neutral flag shall protect the goods of an enemy, some that the goods of a neutral in the vessel of an enemy shall be prize of war; and some that the goods of an enemy in a neutral bottom shall be safe, and that friendly goods in the bottom of an enemy shall also be safe.'—'The United

* 1 Wait's State pap. 123. † 5 Wait's State pap. 455.

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States have in some treaties stipulated for both principles, in some for one of them only, in some that neutral bottoms shall make neutral goods, and that friendly goods shall be safe in the bottom of an enemy.'*

The practice of the United States accords with their theory. In their late war with Great Britain, they invariably captured and condemned British property found on board of neutral ships, when not protected by some express treaty. If this is not *enforcing* the principle, we would fain learn what would be.

If we thought with this author, that the doctrine of free ships free goods had become a settled principle of public law previously to the war of the French revolution, and that Great Britain had subsequently refused to acknowledge it, and not been followed in this refusal by the other powers, we should readily accede to the conclusion that, of *right*, this is still the law; and we should venture to add, in *fact* also. But a brief reference to the history of this celebrated maxim will probably satisfy our readers that the premises of the argument are erroneous. The writer frankly admits, that the opposite rule was the settled law of nations in the middle of the seventeenth century. We were not aware that it was contained in most of the treaties concluded before that time; but supposed it to have been deduced from the general principles regulating the rights of belligerents, and established by custom rather than by express treaty. However this may be, if it was then the settled law, it must be deemed so now, unless it be proved that it has since been changed by the common consent or general practice of nations.

The first systematic effort to introduce the rule, that free ships make free goods, into the treaties of Europe, was made in the middle of the seventeenth century by the Dutch, who connected with it the rule that hostile ships make hostile goods; their doctrine being, in effect, that the character of the vessel should in all cases determine that of the cargo, and their apparent motive, to secure to themselves the carrying trade of the world; for they were then at the height of their prosperity, and their policy was essentially neutral. This was the doctrine so often inserted afterwards in commercial treaties until the year 1780. The two maxims were connected

* 9 Cranch Rep. 418 to 421.

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in substance though not always in form, and were represented, we say not how justly, as equivalents for each other, a sort of compromise between neutral and belligerent rights. In 1780 the empress of Russia published a declaration setting forth what she claimed to be the rights of neutrality, the most conspicuous of which was the rule of free ships free goods, and inviting the belligerents to recognise, and the neutral powers to join with her in forcibly maintaining them during the existing war. In the same year, Sweden and Denmark, although the ancient treaties between both those nations and Great Britain, then in force, contained the opposite rule, accepted her invitation, and formed with her the celebrated coalition, called the armed neutrality; to which, in the following years and before the peace of 1783, Holland, Prussia, Austria, Portugal, and the Sicilies acceded.

The treaties, establishing this coalition, separated the maxims previously united, and declared that free ships make free goods, without admitting the converse, that hostile ships make hostile goods. Of the belligerents, France answered, that her existing ordinance established the rule of free ships free goods, and that it should be enforced; Spain, that she admitted the correctness of the principle, and would enforce it if England would; and England, refusing to accede to it, declared she would maintain the existing law of nations. The congress of the United States passed a vote, complimenting the empress, and adopting her principles, and appointed a minister to Russia with instructions to offer to establish them by treaty, either with the coalition generally, or with Russia or any other member of it, sagaciously considering that the acceptance of their offer would be a recognition of their independence. But the empress did not receive this minister. Many of the commercial treaties concluded between the end of the war in 1783, to which time the armed neutrality was expressly limited, and the war of the French revolution, stipulated for the observance either of the single rule maintained by that coalition, or the more ancient double maxim of free ships free goods, and hostile ships hostile goods. It was the latter which was contained in the treaty between England and France of 1786. Russia, the founder and champion of the armed neutrality, inserted in some of her treaties the one maxim, and in some the other. But it must not be imagined that any European

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nation made either of these stipulations with all others, nor that every one made any stipulation on the subject.

Hardly did the war of 1793 afford an opportunity for putting in practice these maxims in favor of neutrals, which had become so popular in theory, when they seem to have been generally abandoned. 'Russia,' says Martens, 'made common cause with Great Britain and with Prussia, to induce Denmark and Sweden to renounce all intercourse with France, and especially to prohibit their carrying goods to that country. The incompatibility of this pretension with the principles established by Russia in 1780, was veiled by the pretext that in a war like that against revolutionary France, the rights of neutrality did not come in question.'* France on her part ordered the capture and condemnation of the goods of her enemies found on board neutral vessels, without excepting the vessels of those states, with whom she had stipulated to observe a different rule. Denmark and Sweden declared themselves neutral, and entered into a convention to maintain their rights as such, according to existing treaties, and the established law of nations; without intimating in it what they deemed that law to be in relation to this important subject. But the Danish proclamation of 1793 declares, that the principles of neutrality do not permit any neutral vessel to have on board articles, which belong to the states at war or their subjects.† The United States, as we have seen, on the application of France, formally refused to assert the right of sheltering her property under their flag from capture by the British. The article cited above from our treaty with Prussia, in 1799, sufficiently shows how little the principle of free ships free goods was regarded up to that time, either in the existing or in the two preceding wars.

In the year 1801, Russia attempted to reestablish this doctrine, and for that purpose entered into a coalition with Denmark, Sweden, and Prussia, in the same form and on the same principles as that of 1780. But England, considering this an act of hostility, attacked Copenhagen, and compelled Denmark to suspend a compliance with her engagements, and was proceeding to act against the other powers, when the emperor Paul was assassinated, and Alexander, immediately on ascending the throne, declared his willingness

*2 Sup. au Rec. 345. †5 Wheaton's Rep. App. 75.

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to enter into negotiation with Great Britain. The result of this negotiation was the celebrated treaty between the two powers of June, 1801, expressly asserting the principle that the goods of enemies on board of neutral ships are lawful prize; to which treaty Denmark and Sweden soon afterwards formally acceded. We are not aware that the advocates of the doctrine of free ships free goods, imagine that any event subsequent to this period has rendered it part of the law of nations.

The several treaties, by which the coalition of 1780 and both the coalitions of 1801 were established, professed to be merely declaratory of the existing law. But even such treaties bind only the parties to them; and those which simply lay down a rule for the conduct of the parties towards each other, do not bind either of them to apply that rule to other nations. That most of the European treaties, which have provided that free ships should make free goods, whether accompanied by the converse or not, were intended in this respect to regulate the mutual intercouse of the parties, and not to be declaratory of the public law, is obvious from the circumstance, that the parties themselves at the same time enforced the opposite rule against those nations, with whom they had made no such treaty, and to whom they were therefore bound to apply what they understood to be the existing rules of international law. The numerous ordinances of France before 1778, all declare the property of enemies found in neutral ships to be good prize. Great Britain at all times, and the United States, excepting during the two last years of the revolutionary war, have maintained the same rule. It is contained in the Swedish ordinance of 1715, and in the Spanish of 1702, 1718, and 1780. The ordinance of Denmark in 1659, and her proclamation in 1793 declare it also. The Spanish ordinance of 1779 directs that British property in neutral vessels should be captured and detained, to be dealt with, as the British should deal with Spanish property taken in similar circumstances, which was in fact to condemn it.

On the other hand, it is provided by the French ordinance of 1778, repealed in 1793, and reestablished in 1801, that free ships shall make free goods, and by the Danish prize instructions of 1807 and 1810, that 'free ship makes free goods

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and hostile ship hostile goods.' But, notwithstanding these or any other ordinances of the same import, of which however we have seen none, the fact that the several powers above named, during the existence of treaties, in which they had stipulated to observe the principle of free ships free goods, applied by their public ordinances a different one to cases not provided for by treaty, proves that they understood and intended their treaty stipulations to be exceptions from the established rule, and not the rule itself, contracts binding between the parties and not mere declarations of the existing law.

And after all, what is the principle contended for as being *of right* part of the law of nations? Is it the single proposition of the armed neutrality, or the ancient double maxim of the Dutch? Supposing that the doctrine of free ships free goods was an established rule before 1780, how can it be denied that the converse maxim, which was till then its constant companion, and rested on the same authority, was so likewise? Is this now the law, or how and when was it abrogated? On the other hand, supposing the doctrine of free ships free goods not to have been the law in 1780, in what manner has it become so? The treaties since concluded contain various stipulations, and surely it has not been sanctioned by general practice. Was it established by the armed neutrality? But if this coalition had the right to establish, why had not that of June, 1801, an equal right to repeal it? In our opinion neither of them had any such authority. We have no respect for the pretensions of these holy alliances of a few great nations to the right of making a law for others, as independent if not as powerful as themselves; and when they mean to impose one by force and without right, they should be a little more united, consistent, and persevering in their efforts, than they have been in relation to this subject. On the whole, we see no sufficient evidence that the rule, which was the settled law in the middle of the seventeenth century, has since been abrogated or even unsettled by any competent authority.

'The only remaining passage in the article,' proceeds the writer in his Notes, 'which I think myself called upon to notice, is the following:

'"A pamphlet has been recently published here to refute the assertion of this writer, that the United States acquiesced in the

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rule of 1756. We know of no acquiescence by the United States in this rule; but, on the contrary, they always protested against it, and compensation was demanded and received from the British government for the American vessels, which had been captured and condemned by virtue of the rule."

'The learned and ingenious reviewer seems to be rather delicate in his notions as to what may be considered an acquiescence by the United States in a principle of public law. He admits that they acquiesced in the rule that enemy's property on board of neutral ships is good prize, although this doctrine is stipulated in only one treaty, and the contrary one in seven: and again, he denies that they sanctioned the rule which makes provisions contraband in certain cases, although it appears in terms in the very treaty, which in the other case he seems to consider so weighty as to overbalance the authority of all the rest. It may therefore be difficult to satisfy him that the government ever acquiesced in another rule, which certainly has not been admitted so freely or to the same extent as the two just mentioned. In fact, the reviewer, who declares himself not to be aware of any acquiescence in the rule of 1756, is probably aware of the real state of the case; and the only question is, whether the word *acquiescence* is a correct description of the proceedings of the American government in regard to this rule. This is a point which I shall not insist upon very strenuously, if the reviewer is disposed to contest it. I shall content myself with stating the idea which I intended to convey by the term, and which I think is indicated by it with sufficient exactness in a composition, which, from its nature, cannot be supposed to aim at the verbal exactness of special pleading.

It is unquestionably true that the American government protested against the rule of 1756, when it was enforced by Great Britain in 1793, and obtained compensation for the captures made under it. It is also true, that upon its revival, at the opening of the second war of the French revolution, they again protested against it, although they never obtained compensation for the new captures. It is however, I apprehend, equally well known to all who are acquainted with the subject, that the government never made this point in their negotiations a *sine quâ non* of peace, as they did some others; for example, those of impressment and the orders in council of 1807; and that they did not regard the concession of it by England to the full extent of our claims as essential to the national honor and independence; but were rather disposed to make it a matter of compromise and mutual agreement. Not to enter into a long detail of facts and authorities in reply to a summary assertion unsupported by any, I shall quote, in proof of this remark, a single passage

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from a letter, written on the 17th of May, 1806, by Mr Madison, then secretary of state, to Mr Monroe, then our minister at London, and employed in the negotiation of a treaty upon all the points in dispute between the countries.*

'"Particular care is to be taken that no part of our principle [in regard to the rule of 1756] be expressly or virtually abandoned, as being no part of the law of nations. On the contrary, it is much to be desired that the general principle in its full extent be laid down in the stipulation. But as this may not be attainable, and as too much ought not to be sacrificed by an inflexible pursuit of abstract right, especially against the example and sentiments of great powers having concerns and interests with the United States, *you are left at liberty, if found necessary, to abridge the right in practice*, as is done in the supplement of October, 1801, to the treaty of June of that year, between Russia and Great Britain."

'I repeat, however, that I am not tenacious of the propriety of the word *acquiescence* as here used, and will cheerfully admit, if the reviewer and the author of the pamphlet desire it, that in the hasty and merely incidental allusion to this point, which I have made in a single line, I have employed a word which would naturally convey in this connexion the idea of a more full and direct admission of the rule than ever actually occurred. But I confess myself quite at a loss to conjecture how my remark upon this subject, supposing it even to be erroneous, can be construed into a censure on the government of the United States. It is perfectly obvious, on the contrary, upon the slightest inspection of the passage, that I make the remark, *honoris causâ:* and represent the conduct of the government as highly commendable and politic. After expressing my unqualified disapprobation of the rule of 1756, and stating that the government entertained the same opinion of it, I observe that from motives of moderation and policy they had declined asserting, by violent measures, the full extent of their rights as a neutral power, but had acquiesced in such belligerent pretensions, as did not violate too directly the national honor and independence, giving as examples of this sort the rule of 1756, and the claim to seize enemy's property on board of neutral ships. This view of the subject I believe to be substantially correct, both as regards the facts in the case and the motives of the government. But whether correct or not, nobody can dispute that my language expresses approbation of the proceedings of the government, and not censure.'

* State papers, vol. v. p. 456.

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Those who recollect the repeated denials of the rule of 1756, contained in our state papers, and the almost indignant language in which the government repel the insinuation that they had *acquiesced* in this among other belligerent pretensions, could not have expected from the author of Europe the assertion, however incidental, that they had done so.* He now states that, although the government protested against the rule, they did not obtain compensation for captures made under it after 1802, nor make this point a *sine quâ non* of peace, nor regard the concession of it to the full extent of our claims as essential to our national honor and independence; but were disposed to make it a matter of compromise and mutual agreement, and that this is the conduct which he means to designate by the term acquiescence. We have certainly no disposition to contend with him about words, nor the slightest objection to his employing the term in this sense, but he must not be surprised that we mistook his meaning, until he informed us that he intended to affix to so common a word so unusual a signification. Even now, unless we misunderstand him again, we cannot accord with him entirely in sentiment. The concession that his language might convey the idea of a more full and direct admission of the rule than ever actually occurred, implies, that in his opinion there was some sort of admission of it. Now we believe the government never admitted, but constantly denied the validity of the rule. Not to accumulate authorities, we refer to the very passage, which the writer has selected from the state papers to support his opinion. It enjoins the negotiator not to abandon our principle expressly or virtually, and expresses a strong desire that it be stipulated in its full extent, permitting him, however, if this cannot be done, to abridge our right in practice. What is meant by *our principle* in regard to this rule? Mr Madison himself tells us in the same sentence. It is 'that neutrals may lawfully trade, with the exceptions of blockades and contraband, to and between all ports of an enemy, and in all articles, although the trade shall not have been open to them in time of peace;' a direct and absolute denial of the whole rule of 1756, which is, that neutrals cannot lawfully engage during

* See Mr Madison's letter to Mr Erskine of March 25, 1806. 6 Wait's State pap. 303 to 305; and the report of a committee of congress of Nov. 22, 1808. 6 Wait's State pap. 410.

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war in any trade not open to them in peace. Hence so far as any treaty should admit this rule, so far it would abandon our principle. If then the conclusion of the paragraph cited is taken to be an admission of the rule, it would seem to be a little at variance with the beginning, and to expose Mr Madison also to the charge of inconsistency. The passage, however, will appear perfectly clear and consistent, if we advert to the great and obvious distinction between admitting a rule, which declares that we have no right to carry on a trade in war not open in peace, and consenting by treaty to abridge our right in practice. In the one case we abandon the right, in the other we assert it, but agree to refrain from its full exercise. An admission of the validity of the rule concedes that belligerents have, by the law of nations, authority to prevent our engaging in such trade, an authority, which is of course perpetual, and cannot be controlled or restrained without their consent; while such authority, granted to a limited extent by express treaty, lasts no longer than the treaty, on which it is founded, and cannot be prolonged or extended without ours. This distinction was repeatedly urged on our ministers. Mr Madison, in his instructions of January 13, 1806, after stating that the president is willing to agree that we will refrain from trading directly between a belligerent nation and its colonies, provided the trade between those colonies and our ports shall not be interrupted, adds, 'but [the president] expects and enjoins, that you will be particularly careful to use such forms of expression, as will furnish no pretext for considering an exception of the direct trade between a belligerent nation and its colonies as declaratory of the neutral right, and not a positive stipulation founded on considerations of expediency.' Our government in the same manner offered to agree, that we would refrain from exercising our right to employ British seamen in American ships, provided that no impressments should be made from them; yet surely this was no acquiescence in the claim of impressment.

We cannot relinquish to the authority of this writer, highly as we respect it, our opinion that the right of the British house of lords to put a negative on all legislative acts, is a great and efficient power; and that the division of our own legislatures into two branches, which certainly rests on entirely different principles, is a measure of much practical convenience and

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utility; but shall wait for the arguments, which he intimates an intention of publishing on these subjects, with the confident expectation of being instructed and delighted by them, and with no unwillingness to be convinced.

The author thinks very naturally, that we ought to have given our hearty and unequivocal approbation to the improvements suggested by him, and to have refrained from making any remark about extravagant and hopeless schemes, which could be supposed, from its connexion, to allude to his opinions. This seems to require that we should state more particularly the application of the single remark to which he alludes. In his work on Europe he says: 'If, at a future period, a serious attempt should be made, by a coalition, or in any other way, to remedy this evil, it would be highly expedient to strike at the root of it, and not to stop at the very unsatisfactory point, at which the coalition of the armed neutrality fixed their pretensions,'* and he subsequently recommends the adoption of such a provision as was contained in our first treaty with Prussia, as conformable to the humane notions of the present age. We know not whether he means that this should be the first step, or only the ultimate object of those who wish to mitigate the existing laws of war; but his language, we think, has a tendency to encourage the idea that it would be expedient to *begin* any serious attempt to remove the evil of which he complains, by striking at the root of it, and proposing a stipulation to abolish at once the practice of capturing the private property of enemies at sea. It seemed to us not irrelevant to oppose this idea, which his language obviously favors, without determining whether he intended to inculcate it or not, which we are even now unable to decide; for, in our opinion, there is no reasonable ground to expect, that such a stipulation would be generally adopted in the present age, still less that it would be faithfully observed. We believe the most liberal rule, which could at first be established and enforced, is one which stops short even of that of the armed neutrality, the rule inserted in our last treaty with Spain, that a neutral flag shall cover the property of those belligerents who allow it to cover the property of their enemies, and not of others, and that to begin by introducing this would be more likely to pro-

* Europe, 407.

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duce a practical effect, than any attempt to set up a more indulgent principle. The willingness expressed by the United States to establish the perfect freedom of commerce, in time of war, is highly honorable to them, as evincing a liberal and benevolent policy, and the more so because it is entirely disinterested; since it is very doubtful, to say the least, whether it would promote the immediate interests of this country to give security to the commerce of belligerents. But though the stipulation, contained in our first treaty with Prussia, is, on this account, highly creditable both to the negotiators and to the government; subsequent experience has shown, that there is little probability of its being soon established as part of the law of nations, and its omission in the second treaty is, in our opinion, no subject of regret.

From the author's repeatedly associating the claim of belligerents to seize the property of their enemies on board neutral vessels, as a pretension of England, with the rule of 1756, and from his remarking that 'for these pretensions authorities more or less satisfactory were adduced from the laws and usages of the worst periods of European history, but whether the case of England was made out, even on grounds like these, is a question, which has not been settled and is hardly worth examining;' as well as from some other passages in his work on Europe, we certainly supposed that he questioned the validity of this claim;—and that he questioned it on the ground of its unreasonableness, for he makes no other objection to it, and argues this at considerable length. The object of the first part of the paragraph, last cited in these Notes from our review, was to prove the fallacy of this argument, by showing that it would lead to the extravagant conclusion, that war itself was contrary to the law of nations, since the author asserts, what we are not disposed to deny, that it is both unreasonable and cruel. So far then is the passage from ascribing to him, or to any one else, the strange heresy, that war is in fact contrary to the law of nations, that it supposes the proposition to be so absurd, that if it could be shown to follow from the argument which we understood him to adopt, this of itself would prove that argument erroneous. These Notes inform us that we were mistaken in supposing this right to be in any manner questioned; but we trust the passages above referred to will be deemed a sufficient excuse for our mistake.

We shall cite but one more passage from this pamphlet:

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'I cannot, it is true, quite go the length which the learned critic does, when he states that it is not for one nation or one individual to deny that an existing custom is reasonable; nor do I believe that he is supported in this by good authorities. Vattel holds, on the contrary, that "if an established custom be wise and useful, or even indifferent, it ought to be considered obligatory: but that if it contains any thing unjust or illegal, it is of no force, and every nation is under an obligation to abandon it, as nothing can oblige or permit a nation to violate a natural law." 3, 7, 112. Here the obligation is placed on the other side, and a single nation, instead of having, as the reviewer states, no right to denounce an existing custom as unreasonable, is bound on the contrary to do so whenever it can be done with truth. This doctrine appears to be much more plausible than the other. And to bring the matter to a practical test, I take the liberty of asking the ingenious critic, whether the nation which first denounced the then existing custom of the slave trade as inhuman and unreasonable, did what it is not for a single nation to do. Indeed, the reviewer himself does not seem to be very firm in the faith he professes upon this point, since he states immediately after, that any nation, desirous of changing an existing custom, may take the first steps toward this end by waving the right that accrues from such usage to itself, and thus setting an example to others that may finally be followed by all. Now if he allows a single nation to do this, he would not probably refuse it the privilege of publishing its motives for so doing, which would necessarily amount to a denial, that the custom in question was reasonable.'

The author would not have ascribed to us the whimsical idea, which he so ingeniously refutes, that one nation or individual may not deny an existing custom to be reasonable, if he had not overlooked a few words, which were not intended to be unmeaning. Our remark, referring to the argument abovementioned was, that 'the universal prevalence of a custom is sufficient evidence that according to the common sentiment of mankind, it is reasonable; and it is not for one individual or one nation *to control all others* by denying it.' This expression and the whole context show that our object was merely to state, that no nation or individual could avoid its obligations to others or extend its rights over them as established by the existing law, on the ground that the law was unreasonable; and not to call in question the right of nations or individuals to govern their language and their conduct, not

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affecting others, according to their own notions of rectitude, or to express freely whatever opinions they may be pleased to entertain. To answer the author's ingenious question; the nation, which first abandoned the slave trade and published its motives for so doing, did only what was its right and its duty. And the same may be said of the individual who first did so. But had that nation undertaken *to control all others* by its opinion, and to punish their subjects engaged in the traffic as pirates, this would have been altogether incompatible with the principles of public law.

It is very natural and excusable that this author should be peculiarly sensitive in regard to every expression, which he could imagine to charge him with speaking disrespectfully of the American government. We had no intention to cast any such imputation on him, nor do we think that our language imports any. Indeed we should be slow to forgive ourselves, had we uttered a doubt of his respect for the government of his country, or of the ability and fidelity with which he has served it.

Note. We forgot to refer above to the letter of Messrs Pinckney, Marshall, and Gerry, to the French minister of foreign affairs, dated January 27, 1798, in which they argue at length in favor of the same construction of the 18th article of Jay's treaty, which we have adopted. The following extracts will give some idea of the course and the result of their reasoning.—'The objections to this article shall be considered according to its letter and according to its operation.'—'The admissions contained in the clause are, 1st, that provisions are not generally contraband, and, 2dly, that they are sometimes contraband.'—'The only alteration, which is by the letter of the clause produced in the law of nations, is to exempt from confiscation goods, which under that law would have been subject to it. But it has been suspected to have an object and an operation in practice different from its letter.'—'America with the pride of conscious integrity repels this insinuation.'—'The intention of the government and the practice under the article are in direct opposition to these injurious suspicions.'—'It is plain then that this article admits the seizure of provisions in no situation, where they were not before seizable.' 3 Wait's State papers, 239 to 242.

Art. IX.—*A Geographical Dictionary, or Universal Gazetteer, Ancient and Modern. In two volumes. By. J. E. Worcester, A. M. Second edition.* Boston. 1823.

Of the first edition of this work we expressed our opinion at the time of its appearance,* and availed ourselves of that occasion to attempt a survey of the changes, which have tak-

* See North American Review, VII. 39.

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en place in political geography, within the last thirty years. The present edition is considerably augmented in size, and still more in the amount of its contents, in consequence of the more diligent condensation of matter, with which it is compiled and printed. Mr Worcester informs us, in his modest preface, that having possessed himself of various additional sources of information, he has undertaken a laborious revision of the whole work, written anew almost all the principal articles, and given to it a more systematic form, than it possessed in the first edition. In its present form, it is, we believe, the most comprehensive geographical dictionary that can be called a *manual*, and we think it would be difficult to name a work in two volumes in which more information is contained. The great demand for books of this class, which exists in America, is strongly characteristic of our habits and taste, and the skill manifested in their compilation not less indicative of the literary improvement of our country. One needs but cast his eye on the little volume, bearing date a hundred years ago, which, by the name of a gazetteer, has descended as an heir-loom in most of our families, and in which the geography and statistics of the habitable globe are comprised in a small and ill compiled duodecimo, and contrast such a volume with the work of Mr Worcester, to be convinced of the progress of modern society.

An inspection of Mr Worcester's preface will suffice to show, from what authentic sources his Gazetteer has been composed. Besides various original works, the best English, French, and German gazetteers and books of geography have furnished him materials; and the diligence of the Germans in this department is so well established, as alone to guaranty the instructiveness of a work, in which they are duly consulted. The following passage from the preface will prove the extensive range of Mr Worcester's inquiries:

'It would be unnecessary, if it were possible, to specify all the sources from which information has been derived. It may not, however, be improper to mention some of the principal ones. The two works of similar design, which have contributed chiefly to the improvement of this, are the Edinburgh Gazetteer, completed in 1822, and Hassel's "Geographisch-statistisches Handwörterbuch," published at Weimar in 1817. Both of these are very valuable works, abounding in recent geographical and sta-

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tistical information. The geography of the United States has been improved by the use of various recent publications and documents, and particularly by an extensive correspondence with the different parts of the country. The late census has been incorporated; and in cases in which the population is stated without date, it is to be understood as given according to the census of 1820. Among the sources from which information has been derived respecting South America, are the publications of Bonycastle, Mawe, and Brackenridge, and the documents furnished to the government of the United States by the commissioners of 1817. In giving the statistics of Sweden and Norway, use has been made of Djurberg's Geographical Dictionary of Scandinavia, published in Stockholm, in 1818, and of Hagelstam's Geographical and Statistical Map of Sweden and Norway, published in 1820. Among the works made use of with regard to France, is the geography of that country by Mentelle, published at Paris in 1821. From Picot's Statistics of Switzerland, published at Geneva, in 1819, information has been derived respecting that country. In improving the notices of the articles pertaining to Great Britain, the Edinburgh Gazetteer has furnished the principal materials; it has also been of great use with regard to the rest of Europe, and the other parts of the globe. The works of Hassel, Liechtenstern, and Cannabich have furnished much information respecting Europe, and particularly Germany. Hassel, and also Malte-Brun, have been of much use with regard to other parts. In addition to the works above enumerated, recourse has been had to books of travels and various other sources. In cases in which the information is doubtful, or the statements differ, the authorities relied upon are frequently given.'

Works of this description are liable to some defects almost inseparable from the nature of their composition. In briefly alluding to these, we are so far from referring particularly to the Gazetteer of Mr Worcester, that we are disposed, on the contrary, to regard it as freer from them than any other work of the kind before the public. It is obvious, however, that, from the way in which gazetteers have been written, a good deal of superfluous matter has been accumulated and still more that is valuable omitted. The great occasion of the composition of these works, we suppose to have been the extensive military and commercial operations of modern times. War and trade have not only drawn the attention of the world, from time to time, to particular regions and permanently fixed it on some; but they have also in various ways furnished the information, for which they first create the demand. The almost incredible number

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of newspapers printed in the free countries of the world, in making every man a reader of intelligence, political, military, and commercial, from the four quarters of the globe, has spread far and wide the demand for compends, in which geographical and statistical information is reduced to the most convenient order.

We confess ourselves unacquainted with the first essay at the compilation of a work of this kind in Europe, but we suppose it admits little doubt, that it was made for the gratification of the interest existing in the public at the time. If produced in the thirty years' war, a period uncommonly productive of geographical writings, it would dwell of course most on the geography of Germany. At a later period it would be filled with names accommodated to the Turkish campaigns. A gazetteer from the time of the duke of Marlborough would be full in the chapters of Flanders and the Upper Danube. It is only within the last fifty years that geography has been so thoroughly treated, that geographical dictionaries have thrown off the local character they possessed, and all parts of the world are described with a fulness in some degree proportioned to their respective importance. It is evident, that to write a perfect gazetteer, it would be necessary to read all the original works, of all kinds, that contain geographical and statistical information, and to condense the result in an alphabetical form, and with a reference to the spirit of the age, and the predominant topics of interest. In a work thus composed something no doubt would be omitted that now holds its ground by prescriptive right in these works. We do not mean to hint at the changes, which take place in political geography, and which require from time to time to be corrected; but to the different parts of the world to which the eyes of men from age to age are turned. When Bonaparte marched his army to Moscow, notwithstanding a part of the way had been beaten by Charles XII, the gazetteers could tell us little of Mojaisk and Maloiaroslavetz. We shall now be better instructed on these heads, but, meantime, we want a guide to follow the campaigns in the Cordilleras of South America, or the interior of modern Greece. In fact, so completely has the wheel of fortune been turned round, that if the wars of the Persians in Armenia, of the Turks in Greece, and of the bey of Egypt in Arabia continue, all our modern gazetteers will sink in value, and a good

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manuscript of Stephen of Byzantium, were we fortunate enough to possess that work entire, would be worth them all. Now we suppose that a person, in undertaking to compile a gazetteer feels a great reluctance at omitting any name of a place, which he may find in the preceding works; for fear that a sacrifice might be made of useful information, and in the opinion that the value of a geographical dictionary increases directly in proportion to the number of articles which it contains. In this way, works of this kind become crowded with a mass of names of no present interest; and hundreds of articles which will probably never be consulted still retain their places. To strike out these names might require a little hardihood, a little of Mr Burke's courage of the cabinet, but it would materially reduce the bulk of the volume and improve it by the removal of superfluous matter.

If, in the way we have stated, some superfluous matter has been accumulated, something also that is useful has been omitted, from the mode in which these works have been drawn up. No two ages require the same subjects in a gazetteer. We wish to hear of different places, and in a different way of the same places. Many points of information, once thought important, have lost their interest, and other views have risen into consequence. Our geographical dictionaries are now pretty well rid of the old political geography, and the changes which have been introduced since the French revolution, and of which we took a survey in our notice of the first edition of this work, have become incorporated into the best recent gazetteers. But, if we mistake not, the spirit of the times is so revolutionized, such important innovations have been made in the range of political, military, and commercial reading, voyages and travels have so multiplied, that a perfect geographical dictionary, compiled from original materials, would differ in important features from former works, in the articles it might have in common with them; would not only omit many articles they contain, but extend to many which they omit.

One more suggestion we venture to make on this subject. The design of a geographical dictionary appears to be to enable the person who consults it, to inform himself farther with respect to any geographical name, which he may meet in his reading. Such articles then as consist simply of the name of a place,

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and the country to which it belongs, and which of course can add nothing to the information of the reader, who has met with these names in a bulletin or a log-book, might perhaps be omitted without detriment. In a system of geography it may be important to omit no name, which is known to belong under the head of any country. It may sometimes be necessary simply to enumerate towns, rivers, and lakes. But the design of a geographical dictionary being still farther to explain such geographical terms as occur in reading, it would seem that one might dispense not only with all those names which are of infinitely rare occurrence, but also with all those of which little beside the name is given.

In these points, Mr Worcester's Gazetteer, like all other works of the same kind, perhaps, admits of improvement. The different geographical works which he has published, show him to be a person fully competent to introduce the superior mode of compiling a gazetteer, at which we have hinted, and toward which indeed he has made excellent progress in this gazetteer, in writing several important articles anew, and from the latest and most authentic materials. We are aware also, that the prevailing prejudice is likely to be against us, on the subject of the omission of any kind of names in a dictionary of this sort. We have observed that a value is set on similar compilations in direct proportion to the number of articles. Though we are persuaded that other considerations are more important, and that a judicious selection is more to be desired than an unlimited accumulation, Mr Worcester will probably find few to quarrel with him for having taught them more than they wished, and we cannot but recommend his work to that extensive patronage, to which its highly laborious and conscientious compilation is entitled. The typographical execution is unusally neat and sightly, and the whole work forms a repository of geographical and statistical information greater, we apprehend, than is elsewhere condensed into the same compass, and extremely well adapted to this inquisitive, commercial, news-loving community. By this last sentence, moreover, we would by no means be understood to mean that Mr Worcester's Gazetteer is only a newspaper companion. On the contrary, the perusal of the leading articles will establish its claim to the attention of the scientific and curious student of geography. A gazetteer is a book which no

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man sits down to read, and reviewers, who read nothing, may well abstain from a gazetteer. Those articles, however, of Mr Worcester's work, which we have had occasion to examine, are prepared with singular diligence and accuracy.

ART. X.—*The Prospect before us, or Facts and Observations illustrative of the past and present Situation and future Prospects of the United States, embracing a View of the Causes of the late Bankruptcies in Boston: to which is added a Sketch of the restrictive Systems of the principal Nations of Christendom. By a Pennsylvanian. Fourth edition improved.* Philadelphia, 1822.

THIS publication speaks the opinion of a school of economists, who have been active in diffusing their doctrines. Four editions of it were sold or otherwise distributed last autumn and winter, apparently with the design of aiding the attempt which was made in the last session of congress to procure a revision of the tariff, in order to the encouragement of American manufactures. The pamphlet cannot be said to contain any new principle, or new argument. The topics which it treats are, on the contrary, somewhat trite; such as the balance of trade,—the drain of specie,—and the futility of the theories of Adam Smith. There are in it also many misconceptions, as we think, of facts, and as it proclaims the creed of a zealous school of economists among us, and as no pains, we understand, have been spared in circulating it, we have thought it worth while, in a brief commentary on a part of its contents, to expose what we esteem its errors. This we shall do without observing any other order of topics, than that of their occurrence in the work, and with a wish to preserve a more temperate tone than is always conspicuous in the pamphlet itself.

1. With respect to the cause and extent of mercantile distress, our author says:—'that the mercantile class is, and always has been, too numerous for the commerce of the country, is admitted on all hands; and that the extraordinary number of bankruptcies which have taken place, not only lately, but during the whole course of the wars of the French

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revolution, have arisen from the excess of their numbers, is equally clear. Now whence does this arise? From the depression of manufactures. Thousands of young men, who, had the cotton, woollen, iron, brass, steel, and other manufactures been properly protected, would have been devoted to them, have become merchants, and thus immoderately swelled the number of the class—and hence followed the ruin of so many of them.'

Now that the pursuit of commerce, like every other profitable pursuit, in every free country, has been overdone in America, is true, though by no means to a ruinous extent, upon the whole. On the contrary, the world does not furnish an example of a prosperity so great, so wide spreading, and so rapid as that, which has attended the American commerce, since the time of the French revolution. No where in the history of civilized nations has there been such an instantaneous creation of property, such a conversion of human skill and industry into value, as in the American commerce in this period. This threnody over the crowding of our commerce and its supposed calamitous consequences is to be taken with the reservation, that this commerce has been attended with a diffusion of prosperity, wealth, and improvement unexampled. But suppose the evil to be real, (or as far as it is real,) there is no propriety in ascribing it to the discouragement of manufactures. Different causes have led to the zeal with which trade has been pursued. Young men have crowded into commerce, because the rising generation in this land is ardent and enterprising; because it is intelligent and well informed; because it is frugal and in good credit; because the sea, that beats our native shores, calls out the inhabitants upon it; because the European nations, busy in the dark industry of destruction, have stood in need of our neutral flag to convey their colonial produce; because our citizens have thus been able to turn their hardy muscles, their temperate habits, and their sagacity to a good account; because a rapidly increasing population at home has furnished a market for a vast amount of foreign produce; and because that free government, for which their fathers fought, has left them unrestrained in the choice of their pursuits. These are some of the causes which have occasioned the press into the ranks of commerce. To say this press is owing to the depression of manufactures, is

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purely gratuitous. Supposing it possible, that legislative provisions could have made manufacturing as profitable as commercial industry, (though some of the attractions of the latter pursuit would have been still wanting to the former,) does our author suppose that manufactures would not have been overdone; that there would have been no rush into that business, and none been drawn unprofitably from the plough, or the helm, to the spindle—that there would have been no bankruptcies? Let us look at England, a country, surely, where manufactures are sufficiently encouraged. Observe the bankruptcies proclaimed in the gazettes, and see whether they are confined to merchants. We have taken up the first magazine that came to hand, and out of one hundred and forty bankruptcies in the month from November 17, to December 15, 1821, twenty only were of mercantile establishments, and the other sixth sevenths of every species of manufacturers. We have no doubt this proportion is constant; and indeed who that considers the matter can doubt, that precisely the same causes which produce bankruptcy in commercial, would produce it proportionally in manufacturing pursuits? Bankruptcies are caused by misfortune, untoward accidents of all kinds, by want of skill, want of industry, of economy, of prudence, of judgment; by some or all of these combined. Every profitable pursuit will draw a crowd of undertakers, some of whom will be exposed to a part or the whole of these sources of failure. To ascribe the bankruptcy of merchants to their numbers merely, is to take, then, a very superficial and an incorrect view of the subject.

Equally inadequate is our author's account of the cause of the failure of many manufacturing establishments, which cause he seeks in the want of protecting duties. He tells us truly that many manufacturing establishments were broken up by the return of peace, and some of them, no doubt, in consequence of the competition of foreign products. But when we look into the history of these factories, we find other causes of their destruction. Almost every newspaper a few years since, as is still the case, related the burning of some great wooden castle, under the name of a cotton factory,—a vast tinder-box, miserably guarded, and situated in a village, perhaps, where nothing like a fire-engine existed. So common was this, that it was currently asserted in times of high party excitement,

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that British emissaries were regularly employed to *discourage* our manufactures in this summary way. Again, all manufactures, to be prosecuted to great extent and with great profit, require a very complicated and perfect machinery, not to be had without a great disbursement, nor easily for that. Accordingly, the factories which were so imprudently set up at every waterfall in our country, ill provided with machinery, possessed of none of its most costly improvements, and furnished with nothing but of the cheapest and most ordinary construction, though they might be able, during the total exclusion of foreign trade in time of war, or under a system of prohibitory duties, to continue in operation, must necessarily stop, under any competition. Many accordingly did stop; and who that sees them and knows how they were furnished and how managed, but rather wonders how they got on? Another cause of the failure of our manufactures was the want of experience. A vast accumulation of individual and traditional observation, of dexterity acquired in practice, and often of secret skill, is necessary to the successful conduct of a factory. More or less of it is necessary in every pursuit. A capitalist who knows nothing of trade, would commit a great error in buying cargoes, chartering ships, and making voyages. We much fear, that, without 'any depression of manufactures,' he would soon become bankrupt. But yet it is much easier to conduct a voyage than a factory. Good ships can be bought to your hands, cargoes judiciously laid in by the brokers, and experienced captains sent to sea. But to command all the skill, ingenuity, and experience, requisite to erect and conduct a factory, is a far different affair. Hundreds were erected without a particle of either, and stand the mournful monuments of the improvidence of their undertakers. A tariff of duties, which is to secure the success of such establishments, may well be called a tariff of *protecting* duties. It would be a good deal cheaper for the country to let the government give these establishments, one or two hundred thousand dollars each, and beseech them not try to manufacture. The fourth great cause of the failure of manufactures is the want of capital of those who set them up. *Ex nihilo nihil fit*, and all the tariffs which our author praises, from that of Russia to that of Peru, would not make a manufacturing establishment profitable, were its undertakers obliged to borrow money to erect their buildings, construct

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their machinery, and purchase their raw materials. Notwithstanding the low opinion which our author expresses of Adam Smith, yet, as he has found one sentiment in the Wealth of Nations, to which he yields assent, we pray his attention to another. Having maintained that a bank could not, consistently with its interest, advance to a trader any considerable portion of his circulating capital, Adam Smith adds, 'still less could a bank afford to advance him any considerable part of his fixed capital; of the capital which the undertaker of an iron forge, for example, employs in erecting his forge and smelting house, &c.' Now it was principally on loans of this kind, which it was neither the interest of the undertakers to solicit nor of the banks to grant, that many of the factories in this country were erected; and the natural consequence was that bank and factory usually went over the same dam together. A generous competition existed for a while; the factory wrought up the raw material into cotton, which the bank wrought up into bills, and a year or two put a stop to both processes.

When we make this statement, however, such writers as our author may exclaim *habes confitentem*, and tell us this want of capital is precisely the evil, and that they demand legislative provision to direct capital into the channel of manufactures. This may be done by enacting such a tariff of duties as shall make it unprofitable to employ capital in commerce, and lead its possessors either, first, to lend it to the manufacturers, or, secondly, to manufacture themselves. The first expedient we aver to be unprofitable. In any thriving state of manufacturing industry, under any tariff powerful enough to destroy importation, it would be impossible to carry on manufactures, upon a borrowed capital. No ordinary state of profits could enrich the undertaker, who should be forced to borrow his capital; the business would fall into the hands of those who would conduct it on their own account; the small undertakers in manufactures, like the small merchants in commerce, would bear the brunt of every fluctuation of the business; every fall of prices would put it out of the power of some one or more petty establishments to fulfil their contracts with individuals or banks; and just that class of manufacturers who are now clamoring for protection, would have to clamor as loudly as ever. The second expedient is to force capitalists themselves

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to embark in manufactures. Now, though this would in no degree relieve, but oppress more than ever the small undertakers in manufactures, though there would be just as many bankruptcies on the same amount of manufacturing as there are on the present amount of commercial capital, and though any legislative provision is, indeed, merely a bounty paid the manufacturer at the expense of the consumer, yet we certainly do wish that, as fast as the country is ripe for it, capital may be employed in manufactures. Just as it will always remain our interest to import certain articles from abroad, it has become and will still more become our interest to make others at home. As fast as the American manufacturer can go on to produce the article as cheap as the foreign, so fast we would have capital turned to manufactures; so fast it will turn itself to manufactures, and no faster. But when we go to work with these violent measures, which are to drive capital out of commercial investments and divert it into manufacturing ones, it deserves consideration that all the capital, in this country, is the growth of scarcely more than thirty years. Much of it is still in the hands of those, who have acquired it themselves in commercial pursuits. To engage in a system of legislation, avowedly for the purpose of driving a class of men who have grown up and grown old in commerce, into a new pursuit, is at least a very questionable policy. There is no such pressing need of hurry in the thing; let people have a little time to breathe, and, if the business is so good as you say, depend upon it, it will be followed up.

2. Our author next touches an old stumblingblock,* *the balance of trade.* The sound doctrine is so well admitted on this subject, that it seems almost idle to agitate it, and many of our writer's remarks, if we may venture to say so, sound like the arguments which we find against the Copernican system, in books of the early part of the seventeenth century. Our author sneers at it as a *dictum* of Adam Smith; but certainly there is not a respectable writer on political economy, who holds a different language, and we may challenge him to produce one, from M. Storch in Petersburg onward to the south, who does not reject the system which he maintains on this subject. 'Shall we continue to purchase more of foreign nations, than they are willing to purchase of us? Shall we continue to re-

* See Hume's essay on this subject.

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ceive the laces, cambrics, silks, and woollens of France at seven and a half, fifteen, and twenty-five per cent. duty, and the linens, cutlery, and woollens of Great Britain at fifteen, twenty, and twenty-five per cent., when neither of these nations will receive in payment, for their own consumption, a barrel of our flour, the great staple of half the population of the United States?' But how is it possible to ask, whether we shall continue to purchase more of other nations than they purchase of us? How can such a thing be? A purchase is an exchange; a *quid pro quo*. For every thing the British or French merchant sends us, we send him what he regards as an equivalent; for every thing the American merchant sends to England or to France, he receives back an equivalent. Mistakes and errors of course in single cases may be made. Ships, on the outward or homeward passage, may be cast away or lost, bad purchases made, and losses encountered. These, however, in a trade of a hundred millions, on each side, must balance each other, as the causes that produce them are in existence in one part of the world as well as the other, and the Americans, in particular, do not labor under the imputation of being the party most likely to be *taken in*. With these premises it is surely vain to talk of our purchasing of one nation more than that nation purchases of us. An exchange of values, considered equal, is the very definition of a purchase.

But this brings us to the keystone of this system;—if we purchase of others more than they do of us, we must pay the *balance in specie*. In this, and its supposed necessary consequences, may be traced, according to our author, the *fons et origo malorum;* and the very terms of the proposition, 'to pay the balance in specie,' are convertible, in his judgment, with prodigality, national extravagance, and ruin. This doctrine, though condemned by every sound writer, has been so assiduously cried up, that even judicious men have permitted themselves to be carried away with the current, and sometimes exclaim also against the 'drain of specie.' Congress has once been pushed to the verge of passing a law, to prohibit the exportation of specie; and its shipment from the country is somehow or other by very many regarded as a calamity. Were it any thing else that was sent away, it would be regarded as a proof of the demand abroad for the article; and, placing reasonable

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confidence in the skill of our merchants, we should trust them to make their own bargains, and get an equivalent for what they send. To talk of a drain of cotton, a drain of tobacco, a drain of flour, or a drain of coffee or sugar, would be of course absurd. Such a drain would be hailed by all who wished the progress of America. We should trust the shippers to get their money's worth; and if we saw them year after year sending out their cargoes of wheat, cotton, and tobacco, we should have little doubt that year after year an equivalent was coming back with reasonable profit. But as for the exportation of specie, it is a drain, an impoverishment, a balance against the country. The merchant doubtless gives it away to the foreigner; he gets nothing for it; it might as well sink in the ocean as arrive at the port; and, moreover, a certain limited quantity of it is assigned by Providence to the body politic; to drain that, is to bleed the public to death.

Now nothing surely of all this is true. There never was a merchant, unless under some particular casualty, who made a gift of a cargo of specie to his correspondent abroad. There never, excepting under accidental circumstances, was a specie dollar sent to foreign countries, for which the sender did not calculate to receive in return, what he thought more valuable than the dollar. Nor is it his own judgment that decides him here; he exchanges his dollar for that which his neighbor, his customers, his country will think and do think more valuable. Moreover, there is nothing peculiar in specie to make that bargain bad, of which the price is paid in silver, which would be good, if the price were paid in cotton or tobacco. Specie is procured by our traders, in the same way that cotton, flour, and tobacco are procured. The merchant that remits specie, procures it by precisely the same process as is employed by the merchant that remits tobacco; and he is determined by prudence which to remit. Trade, it is true, may be and often is overdone. Cotton may be exported to a sacrifice; tobacco may be exported to a sacrifice; and specie may be exported to a sacrifice; and so may they all be exported to a profit. If a merchant, who owed a sum of money in England, were to send a cargo of cotton to pay it, our author would credit it in the national account. The lower the price was in England, and of course the more disadvantageous the operation to the American, the more the item would figure to our credit, be-

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cause the more cotton would be sent. But let the merchant, finding that cotton will not sell to profit, prefer to send specie, which perhaps will, and lo, this little word has operated like a juggler's wand,—we must not trust the merchant, that he has acted prudently,—specie is drained off, and the country is so much the poorer. If a merchant, owing a sum of money in England, send a cargo of flour to the Havanna, invest the proceeds profitably in sugar, order this to Russia, sell to profit, and remit favorably to London to pay his debts, this we suppose our author would allow was good business. But let the same merchant bring the price of his flour home in dollars and remit them, and though the operation may be, in proportion to its extent, as profitable, this disastrous *specie* comes in and makes it ruinous. Whence arises this peculiar and, we may add, calamitous property in specie; famed as the great medium of trade, the great facilitator of exchanges; but found out by these economists to ruin every exchange between nations, where it is employed? Whence comes it into our country? Is it not brought in the same way as tea, as sugar, as silks? Is it not the labor, skill, attention, and capital of our merchants that bring it here, as they do brandy from France, or indigo from Calcutta? Will they ever intentionally, ever in the long run, bring more than there is a demand for? Is the demand for specie so unlimited, that, bring as much and carry away as little as you will, the value of the article is always the same? Will it come, when it will not yield a better profit than any thing else? Will it go, when it will yield a better profit at home? and while it does stay, what mysterious value has it, that it must be kept in the country by prohibitions,—that withdrawing it is to be called a drain? It is good neither to eat, drink, nor wear. Put a dollar before the hungry man or the thirsty man, and what will he do with it? *Export it;* drain his pocket of its *specie;* take his neighbor's beef and broadcloth and give silver in return, which our author regards as an abomination; and when he has filled his craving stomach and clothed his shivering limbs, a member of our author's school would tell him that the balance of trade was against him; that he had bought more of the trader, than the trader would buy of him, and that he was drained of his specie. Does the scale, on which we take the example, alter its nature? A large majority of this people like, at the close of the day, a cup

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of tea; we like it ourselves. The gentle *stimulus* with which it excites the nerves, the mild companionship it seems to form of the solitary hour, the point of union which it constitutes among neighbors and friends, have elevated tea into serious importance; and, in an age like this, when whiskey and brandy are making such inroads, any liquid 'that cheers but not inebriates,' is entitled to the attention not merely of the political economist, but of the moralist and the politician. Whatever be thought of this, it is a generally favorite object of consumption. The mass of the people do say, that it soothes, cheers, and comforts them. We know that some of our manufacturers, we are sure our author will not patronise their extravagance, have also cast their eyes on the manufacture of tea; that they talk of 'the poisonous weed,' the 'worthless, insipid leaf,' and would fain bring the people of these hitherto favored states, to some loathsome decoction of oak leaves or St John's wort, which, forsooth, is as wholesome as tea. All this however is in the highest degree Hudibrastic. There is a redeeming spirit in the community that will resist the doctrine. It is in vain 'to commend the ingredients of the poisoned chalice to our own lips,' filled with camomile or succory; and the inhabitants of the United States, particularly the Yankee portion, know too well on which side their bread is buttered, to give up their coffee or their tea. They esteem them both cordials, and so they are. Now it so happens that this tea groweth not in the Genesee country nor yet on Sullivan's island, but in the Celestial Empire of China;—and your disciple of Confucius, being a sturdy restrictionist, will take nothing but specie in pay for his tea. The Americans, finding that specie, in its original form, can neither be eaten nor drunk, that the most you can do with it, in this case, is to melt it into a tea-pot, but that no art has ever melted it directly into tea, green or black,—having, we say, discovered these facts, have fallen into the habit of sending off some of their dollars to the Chinese, who send them tea in return. What the Chinese do with their silver is not known. It is said that they put it in pots (much as we do their tea,) and bury it in the ground; a policy which some might approve, as it must effectually prevent the specie from quitting the soil. Whatever becomes of the specie in China, some of the tea comes back to America to gather families together at the close of the day; to awaken

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the vivacity of the social party; to stimulate the flagging appetite of the invalid; to brace the nerves of the student; in short, *to promote human happiness.* An exchange has been made of so much gold and silver, which could not be consumed for the supply of one human want or the gratification of one human taste, for a healthful, cheering beverage. Every body is the better for it; the merchant has made a good voyage, or he would not repeat it; the consumer prefers the tea to the price he pays for it, or he would not buy it; and more is done by the importation of it for the cause of good morals, than all that the societies for the suppression of intemperance ever accomplished. But the manufacturer tells you, how much better it would be to keep the money in the country. Why better? And what will you do with it? Eat or drink it you cannot. Coarse cottons and even printed ones, though exceedingly useful in their way, will not serve for cordial and food, as well as clothing. To say it would be better to keep the money at home, which we send away for tea, is merely to say that America would be a more favored country, if, to its own staples, it added those of China; and even if it did, unless we had a population so crowded, that two or three hundred children should daily be thrown into the river, it is doubtful, whether we could raise tea, cheap enough to be consumed, although it should grow on our soil, as freely as a Canada thistle. However, we grant that could tea be grown to profit in America, the country would be richer. If we united the prerogatives of all climates, we should be more prosperous than with those of one. If we could raise Champagne wine and Java coffee, and pepper, and tea, we could nourish a part of the population, which is now supported in France and India in furnishing us these articles. But till we can raise them, the country is neither richer nor happier for keeping the money at home, and consuming succory and New England rum. We have thus spoken of the specie trade to China, because our author, though he has much to say of the drain of specie, has put a face upon the facts of the case, which we take upon us to say they do not admit. We quote a sentence, which amounts, we think, to a confession that he has not fully investigated the subject, which he treats.

'There is one fact connected with this subject calculated to excite surprise. Of the amount of specie exported in the two

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first quarters of this year (1822) from Boston, viz. $1,204,446; there is only about $6,200 stated as shipped for Great Britain, the items being as follows:

Batavia	$24,000		344,767
Calcutta	200,000	Dutch E. Indies	284,000
Cape de Verds	300	China	520,453
Buenos Ayres	8,000	India generally	41,000
Brazils	32,000	Liverpool	6,267
Cuba	80,467	Sundries	7,959
	344,767		1,204,446

'It is scarcely possible but that the exportation to Great Britain must have exceeded the amount stated; and it is perfectly supposable that there must be an error in the statement. But the point must be left to the decision of the reader.'

But we must except to so compendious a way of deciding points and dealing with facts. Our author and his school first assert, that we buy of Great Britain yearly from fifteen to twenty millions' worth more than she buys of us, and that, to pay for this balance, the country is drained of specie. They then go to the customhouse books, to prove that the specie is exported, and finding that out of $1,200,000, only 6,000 or $\frac{1}{200}$th part, goes to Great Britain, they then tells us, in the face of customhouse returns, that it is not possible more should not be sent to Great Britain, and leave the whole to the reader.

But we will grant to the author, though he does not himself, that we remember, urge it, that though this specie is not sent directly to England, it does still go, no doubt, in part to pay this aforesaid balance. It goes to China for tea, to Java for coffee, to Calcutta for indigo; and, these being sold in Europe, and the proceeds remitted to London, thus the balance is actually liquidated by our specie, though little of it be sent directly to England. This our author does not appear to have adverted to, or he would not have pronounced it impossible that the Boston return of specie sent to England was not erroneous, and stated that more must needs be exported; but he would have urged it to prove that, with all its circuitous channels, our trade nevertheless was on such a footing, that we must needs pay a specie balance to the English. Though we thus put the best face on his reasoning, and save the necessity of the

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unpleasant intimation, that the returns of the customhouse in this point are grossly deceptive, we would observe that in thus tracing the specie by the route, which it really takes to England, we see how unjustly our merchants are charged with pursuing a ruinous commerce with that country. The dollars shipped from America, by a judicious investment in China, and another in Europe, will perhaps have increased in value fifty per cent. by the time they are finally remitted to London, of which gain, a portion goes to pay so much more of the 'balance against us.' Now this increase is a value added to American capital, by American industry, and if paying balances of trade, by the clear profits of our industry, be national ruin, one could never wish the country a better fate, than to be so ruined.

We are surprised that our author did not perceive what an inadequate, not to say what an incredible account he was giving of our trade. He states the excess of imports over exports for nine months of the year 1822, to be over $17,000,000. This he calls a balance against us to be paid by a drain of specie. But the whole excess of specie exported over that imported for the twelve months ending September, 1822, is short of $7,500,000. Now our author must either suppose that this $7,500,000 pays the foreign debt of $17,000,000, which is a pretty good business of itself, or he must suppose that a balance of $10,000,000 remains unpaid. This last he might do, were the importation of 1822 remarkably great; but it does not seem so to have been, and, in fact, it abundantly appears from Dr Seybert's chapter on the subject, besides that it is a matter of notoriety, that this balance *has always been against us.* From 1795 to 1801, the golden age of American prosperity, there was an aggregate balance against us of ONE HUNDRED AND SIX MILLIONS of dollars, making an annual average of more than $15,000,000 in the trade with Great Britain alone. From 1802 to 1804 inclusive, the annual balance of trade between the United States and Great Britain, was $17,071,253. From 1805 up to 1811, a period of seven years, 'the aggregate value of the British produce and manufactures annually exported from Great Britain to the United States amounted to 35,441,367 dollars; and the annual value of the domestic produce of the United States exported to Great Britain, calculated on the same average,

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amounted annually to 9,124,941 dollars, leaving an annual balance of 26,316,426 dollars in favor of Great Britain.'* Since the termination of the war, this balance certainly has not been less. If our author chooses to say that this balance is paid in specie, it is very clear that it can only be by a great annual importation of that article, or a transfer of it to London, from other foreign ports. How then can this be called a drain of our specie, when it is the reexportation of an article imported only for the purpose of being thus reexported. So fixed is the author in the idea that it is all sent out of the country, that he calls in question the accuracy of the customhouse returns; and he not only chooses to maintain that this balance is paid in specie, but he insists that the country is drained of its *circulating medium* to pay it: without being moved by the enormous improbability, that the circulating coin of this country, should from 1795 up to 1801, a period of seven years, have paid over 106,000,000 of dollars, from 1802 to 1805, 51,000,000, and again from 1805 to 1811, a sum of 164,000,000 millions, a quantity of *silver*, not much less probably than the Mexican mines yielded in the same period. The only way by which our author avoids this difficulty, is to intimate that we annually become indebted to a vast amount to the English nation. As it is not probable that the annual average of the specie exported from the country exceeds $5,000,000, and as the annual balance of trade against us since 1795, may be safely assumed at $20,000,000, we should be thus made to incur an annual debt of $15,000,000, which, without reckoning interest, would amount, from 1795 to the present time, to *two hundred and seventy millions.* This is the unavoidable result of the plan, by which our author maintains that the balance of trade is paid by us to England. Either we have paid in silver since 1795, $360,000,000, or we are indebted to the English $270,000,000. Either conclusion seems to us a *reductio ad absurdum.*

These absurdities may be avoided by two possibilities, either of which is fatal to our author's supposition. One, and the true one, is that there is no balance against us, as will be presently explained;—the other, that if there be a balance which we must needs pay in specie, the specie must be imported as merchandise for this very purpose. To deny to merchants the right of exporting it, would be merely to cause,

* Seybert's Statistics, p. 287, 288.

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remittances to be more directly made to England from foreign ports where our merchants collect specie, and no more of it would come to this country.

We say *no more*, meaning no more of all that had been imported for re-exportation. Our author speaks of *specie* and *circulating medium* as convertible terms, and would have it believed that, when dollars are sent out of the country, the circulating medium is reduced. The error of these antiquated views has been so often exposed, that it may seem superfluous to enlarge on them. Silver performs in society two functions, which are as unlike as the ordinary uses of a bank note and a bale of cotton. A portion of specie, *a very small portion*, acts an important part in society as a medium of exchange. The nature of the subject does not enable us to calculate with precision what proportion of coin is required to circulate any given amount of property, but it is certainly very small. Millions are bought and sold in the market without the intervention of a dollar, and the larger the scale and the more extended the mart, the less occasion there is for this medium of circulation. It is impossible to ascertain the exact percentage, which the amount of the circulating medium bears to the amount of the property which it circulates, the ratio being not constant but affected by the density of the population, the nature of its trade, and various local circumstances. Still, considering the innumerable channels of supply for whatever is in demand, and the instantaneous rise of prices when money abounds, and their depression when it is scarce, it does not seem possible that in any way—not even of legislative interference—the circulating medium can be diminished beyond what the business of the community demands. Diminishing its quantity will only increase its value for the moment, and occasion an influx. Increase its quantity, and its value will fall, and it will be exported. Wholly remove it in the shape of coin, and a substitute will be found. Mr Ricardo has abundantly proved, that specie is not necessary to circulate value. Why should it be? Nothing in the last analysis is necessary, but that which is itself to be consumed for the gratification of a want; and unless silver plate be called a necessary, there is no form under which silver can be so regarded; for in plate alone is it immediately consumed. For every other purpose, for that of circulation particularly, silver is convenient and safe, but by no

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means essential. Who sees a silver dollar, nowadays? who wishes to see one? And if it were not more economical to use silver change, than to encounter the risk of loss and the expense of the engraving of bills, we should make no use whatever of silver, as a part of the circulating medium. In this respect highly advanced societies return to the practice of highly barbarous ones. The latter make no use of coin, but exchange produce against produce; and highly advanced societies, where property is protected by law, are content with much less cumbrous evidences of possession than silver.

A little reflection, indeed, must show that the consequences of a drain, even of the circulating medium, were such a thing possible, which we are strongly disposed to doubt, though certainly an evil, could be productive of no extreme consequences. The amount of the circulating medium, as we have said, is small in proportion to the property it circulates; to annihilate it, therefore, would, for the moment, be the annihilation of a small part of the national capital, of that part precisely which it is most easy to replace. Secondly, though the specie be exported, it is not thereby annihilated, but an equivalent in another form returns; and it is idle to talk of the country's being ruined, because a small part of its property has assumed a new form. Thirdly, all the essential elements of national wealth would remain—the fixed capital of the country—its territory—its population—and their industry and skill; and nothing, that does not destroy these, can deeply injure us. But we maintain that the drain of specie does not and cannot extend, beyond the moment, to the circulating medium. It must, from absolute necessity, be confined in a great measure to that other part of the gold and silver, which comes into the country by way of trade, and goes out in the way of trade, and which, if it cannot thus go out, will most assuredly not come in. That the specie exported must be confined to this part of the gold and silver coin is plain, because the moment it extends to the other portion, the real circulating medium, the price will begin to rise with a rapidity that will check the purchase of it, and produce an influx of more. The true circulating medium can never be exported, *because it is* the circulating medium. It is diffused throughout the community,—every man has a portion of it,—it exists no where in commercial masses, the brokers cannot collect it in-

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to such masses, because it would rise upon them too rapidly in the act of purchasing it.

It is true a great temporary demand for specie, as for any other goods, may exist, and a scarcity of it ensue. The injurious consequences to individuals are, not that money enough does not remain to circulate the values in the community, for this, in the present state of the world's commerce, is manifestly *impossible*. But the price of money being raised, by the extraordinary consumption, those who have debts to pay at a certain period, that is, those who have contracted to deliver, sixty days hence, a certain quantity of money, are exposed to a loss; and failures may be the consequence. But is there any thing peculiar in this? Does this prove a deficiency in the circulating medium; and one that requires violent legislative interference,—duties on imports, bounties on manufactures, and a comprehensive change of our whole policy? How does the embarrassment just mentioned differ from any other, arising in trade from an unexpected state of the market? A merchant contracts to deliver flour at a fixed price, on a certain day; the crops fail—the grasshoppers, nature's active little brokers, consume all the ready standing corn; autumn refuses to make her usual discounts; and behold, our merchant, who depended on getting his usual accommodation from the great land bank of the soil, is ruined. Another contracts to deliver a sum of money in sixty days, and depends upon the high price of coffee, of which he has a cargo homeward bound, which he expects to sell to great profit, and with it pay his debt; his vessel has a long passage, others arrive, the markets are glutted, his coffee is sacrificed, and he is ruined. Is there any thing in these cases, essentially different from the other, in which the contract is made for money; or rather is it not in this form chiefly that money contracts are discharged? And is government to interpose, with its sovereign power, and make and alter tariffs, and turn industry out of its chosen and long accustomed channels, because improvident speculations have been attempted, and engagements entered into, of which the fulfilment has proved ruinous?

3. But our author has much to say on this last point, and has even brought the bankruptcies in Boston the last summer into his title page, with a promise of presenting a view of their causes. Their chief cause, in his opinion, is the drain of specie, the

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causa causarum of all inauspicious effects. It is true, that failures to the number of ninety or more took place, though not of a magnitude to entitle them to so conspicuous a notice as the author has given them, and not among those on whom this unfavorable balance fell, that is, the importing merchants, but among a totally different class of traders. This fact, like the one alluded to above, our author meets in the same ingenious way, viz. he calls it in doubt, or leaves it undecided. We quote his words:

'The other assertion,' says he, 'is, that not above two or three persons extensively engaged in the importation of dry goods were among those reduced to bankruptcy. The object of this assertion is, to induce the world to believe that there was no connexion between the importation and the distress and ruin that occurred in Boston. If the assertion be true, *which I can neither assent to nor deny*, the inference is by no means warranted. The fact is directly the reverse of the inference. The failures took place in consequence of the pressure on the banks produced by the drain of specie, and the drain of specie arose from excessive importation, although the importers may have escaped the general calamity. It is impossible, I repeat, to form any precise idea how far the calamity, which has visited Boston, extends. *But it behoves every man in business to be wary, and to guard against entering into any engagements which he can avoid.*'

We must needs pronounce this a lame and impotent conclusion. What! is this the moral of the solemn elegy over our ruined commerce! This the lesson to be derived from the 'calamity,' 'the ruin,' 'the tornado,' which has visited Boston! Nothing but 'to guard against entering into engagements he can avoid.' But these reflections are *aside*. We meant only to examine how our author replies to the assertion, that the failures in Boston, in scarce one instance, fell upon the importers. He first attempts wholly to shift the state of the question; he says, 'the object of this assertion is to make the world believe that there was no connexion between importation and the distress and ruin which occurred in Boston.' We know not with whom our author may confer on these points, but we protest against having any such object attributed to the mass of those who make this assertion. They maintain that it is not to the *drain of specie*, as a part of the circulating medium, that the failures are owing. We all know that business was overdone, and too many goods imported, and where

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this is the case, a loss must be incurred, to the extent of the excess of the supply over the demand. This loss will fall somewhere. On whom it falls, will depend upon the stage of the business, in which the reaction begins. If it falls early, it will be on the importer, who cannot sell his goods to the home trader to profit; if at a more advanced stage, it falls on the latter, who cannot get them off his hands in season to fulfil his engagements with the importer. But this is a very different thing from a deficiency in the circulating medium. There is money enough, but too many goods. Men have made bad speculations, and the remedy is not to prohibit the exportation of specie, still less to tax foreign merchandise up to prohibition, but simply, as plain, unsophisticated sense seems to have whispered to our author, to be prudent, and '*guard against entering into engagements.*' The circumstances, which, we assure our author, are justly stated, that the failures were confined to those traders, who stand between the importer and the consumer, and that the importers escaped the '*general* calamity,' (a singular *general* calamity produced by an excess of importation, but which the importers escaped,) are decisive of the real causes of the failures. In the first place, we say it was not a drain of specie that produced the distress, for in all the two first quarters of the year 1822, *not seven thousand dollars* were exported to England. The failures took place chiefly in May and June, and it is wholly impossible, if the cause of the failures were a drain of specie to pay for the excessive importations of British manufactures, that only seven thousand dollars of this specie should have gone to England. The specie that was exported went chiefly to India and China. Should our author make use of the hint we gave him, and say that the distress was produced by the high price of bills of exchange on London drawn on the strength of the cargoes, which the aforesaid specie would purchase in the east, and of which the avails would be remitted to London, we deny this statement; for it is certainly absurd that bills should be sold on London in May, 1822, to take advantage of remittances to grow out of exportations of specie to India, made at the same time from America. The bills for those remittances have not yet come into the market. Therefore the distress of the last summer was not caused by the drain of specie. None of the specie (except a mere fraction) was drained in the branch

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of trade that suffered. We go farther, and say there was no drain at all. There was not an excessive exportation of silver from Boston, while the failures took place. In the first six months of 1822, in which the failures, we believe, exclusively occurred, there was shipped from Boston the sum of $1,204,446, of which $1,069,453 went beyond the Cape of Good Hope. In the banks of Boston, there were, in the beginning of the year, $936,427, and on the 22d of June $406,275. Thus, though $1,204,446 had been exported, $530,152 only had been drawn from the banks, and supposing the banks to have curtailed their discounts to this amount, does our author suppose that a reduction of discounts, to the amount of five hundred thousand dollars, in six months, was the cause of the failures of nine-three traders to the amount, as he states, of three or four millions? But we propose, on this point at least, to settle the question. Our author affirms that the failures in Boston took place in consequence of the diminution of the circulating medium, produced by the drain of specie. Now it needs not be said that specie, *as such*, forms no part of the circulating medium among us, except as change of a dollar. The only way in which specie can be said to form a part of this circulating medium, is in its connexion with bank notes and the necessity the banks are under, of redeeming their bills. This necessity holds a certain quantity of specie fast in the vaults of the banks, as a hostage for the redemption of the bills. It is these bills which constitute the circulating medium. Now it appears from comparing the reports of the Boston banks for January and July, 1822, that though the quantity of specie in their possession had fallen from $936,427 to $406,275, yet that in the same period, the period of greatest distress, the period in which, to use our author's glowing language, 'the tornado burst on our devoted city,' the notes of the Boston banks in circulation had been diminished from $1,231,381 only to $1,215,011, a difference of $16,370. This is the effect, on the *circulating medium* of the town, of the great exportation of specie, and a reduction of sixteen thousand dollars has produced failures to the amount of four millions!

It is true, that, in the period above named, the deposits at the Boston banks were considerably diminished, and the discounts of the banks reduced in consequence from $9,867,498

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to $9,059,593. This reduction produced, for a very short period, a comparative scarcity of money, and increased the difficulty of obtaining loans on doubtful credit. As this scarcity of money, moreover, must have had the effect of the scarcity of any other commodity in demand, it is obvious that even persons in good credit must have found it difficult to get accommodation at the banks, which could not have money to loan when worth more than its legal interest. But no such distress and embarrassment, as our author would maintain, occurred. There was no actual deficiency of circulating medium for all the demands of trade. Money could not be borrowed so readily as three months earlier or three months later, but it could be borrowed still on good credit; and it could be obtained during the whole period thought so disastrous for merchandise of any kind, without any material sacrifice. We assert, on the authority of the most respectable merchants, that prices were not materially depressed; that sales for cash might have been effected without any great sacrifice; that loans to a large amount were obtained at legal interest; and might have been obtained to any desirable amount, by any one who had security to offer, for a premium of one or two per cent. during the whole period of the greatest scarcity. The very facts in which the evil is said to have its origin, prove that it could not have existed. One of the largest shipments of specie made during the year, amounting to $400,000, was made at the time of the greatest scarcity; and yet our author would have us believe that money could not be borrowed at *fifteen* per cent.

It follows from all these premises, that the failures were the consequence, not of a want of circulating medium, but of a want of property to command it on the part of those who failed. They failed, in other words, because they were actually insolvent, and not, as the writer would have us believe, because they were embarrassed for the moment. We have the best authority for saying, that, except in a few of the instances and those of no great magnitude, all the individuals, whose names go to swell the alarming list, were completely insolvent, independently of any embarrassment produced by the scarcity of money.

It is of course impossible to account for all these failures, without entering into the history of every single case. They

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arose from a variety of causes. A general cause was over-trading. The market was filled to repletion, the profits on some branches of trade became exceedingly small, on others there was an actual loss. Those, of course, who traded on borrowed capital, that is to say, on no capital, were ruined. Misfortune and accidental losses in some, improvidence and want of foresight in others, contributed to the same effect; and all the causes enumerated above, to which failures in commerce may be attributed, had a share in producing those which took place in Boston the last summer. It should be remembered that very few failures had happened among the merchants of Boston for many years. The great facility of obtaining money, in consequence of the abundance of capital which sought an investment, even at a low rate of interest, where the credit was good, enabled those on the verge of bankruptcy, to postpone the day of failure, which, but for these circumstances, would have arrived long before. Thus nearly all the bankruptcies of several years were crowded into the space of a few weeks; and their occurrence within that period no more proves a disastrous and ruinous scarcity of money at that time, than their not occurring in the former period proves a stagnation of business, and a treacherous superabundance of capital. At any rate, the bankruptcies were not occasioned, though the time of the failures may have been determined, by the exportation of specie and the temporary scarcity of money; for the individuals who failed were for the most part insolvent before the scarcity occurred, and the specie would not, of course, have been exported had it been actually wanted for the purposes of a circulating medium here, in paying the debts of those who had merchandise, stocks, real estate, or other property, to give in exchange for it. We could not have believed that four editions of a book could have been published to prove, by the ninety failures in Boston, that the distress arose there from the exportation of specie to pay for the ruinous excess of European imports, with these three facts before the world; first, that only seven thousand dollars were sent to England from Boston; secondly, that the circulating medium was diminished only sixteen thousand dollars; thirdly, that out of the ninety-three failures, scarce one was of an importer.

4. We proceed now to a singular document, the debts *of the*

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United States to foreign countries, stated by our author to amount to about $60,000,000, as appears from the following table:

'Government stock held by foreigners (Sept. 1822.)		$27,856,152
Stock of the United States' bank, do. (Oct. 1822.)		3,189,400
		$31,045,552
These alone can be stated with precision. It now remains to estimate the other items of debt.		
1. Commercial debt standing previous to the present year, supposed,	$15,000,000	
2. Actual difference between imports and exports of nine months for eight ports (for 1822.)	17,000,000	
3. Supposed difference of the remaining ports and fourth quarter	3,000,000	
4. Stocks of individual states	2,000,000	
5. Stocks of state banks, insurance companies, &c.	3,000,000	
6. Supposed loss on cotton, flour, &c.	3,000,000	
		43,000,000
		74,045,552
Deduction of losses by foreigners on consignments sacrificed at auction, &c.		5,000,000
		$69,045,552

This may be a few millions erroneous, but it is as likely to be above as below reality.'

A table of errata appended to the pamphlet, however, tells us that in the items 2, 3, 4, there is probably an overstatement of 3 or 4,000,000 of dollars. Our author plays with his millions; and whether out of a sum of 22,000,000 he is three or four millions out of the way, that is, a fifth or a seventh of the sum, seems to him a matter of indifference. The truth is, the amounts are imaginary. Our author might as well have put the debt of our merchants before the last year at $45,000,000 as at 15,000,000. His system would make it as we have seen above, amount to $270,000,000. In the three next items of 22,000,000, though 17,000,000 of it rest on customhouse returns, furnished by the politeness of collectors and deputy

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collectors, an overstatement of 3 or 4,000,000$ is confessed; and why not say 7 or 8? In this guess work of millions, why be so parsimonious? The amount of the excess of the specie exported over that imported is ascertained by our author from information 'furnished chiefly through the politeness of the secretary of the treasury, and completed by the kindness of the collectors of Boston, New York, Philadelphia, Providence, and Baltimore.' This amount is stated, on page 24, to be $8,661,109. Here, however, notwithstanding the politeness of one secretary, and the kindness of five collectors, our author informs us in his *errata*, that there is an overstatement of $1,226,375, nearly a seventh of the whole. How the error arose, or where it resides, he has not told us. The figures which he gives us are rightly cast. He tells us, that 'these errors do not materially affect the general conclusions, drawn from the table to which they belong.' But how can it be said that an error of $1,226,375 does not affect the conclusions to be drawn from an amount of $8,661,109. As the excess of the amount of specie exported over that imported, which in the errata is stated to be $7,434,634, is to be deducted in this account of the debts of the country, and as our author acknowledges an exaggeration of 3 or 4 millions on some other items, we have these two sums or 11,000,000 to deduct from this balance.

Five millions he deducts himself for the losses of the foreign exporter on the consignment of goods sacrificed at auction. Thus we have 16,000,000 to deduct from 43,000,000, reducing the commercial balance to 27,000,000, by our author's own data.

But we have more serious exceptions to take to this statement, than that of exaggeration in the amount. It is delusive in its nature. It is formed, we will not by any means say on principles, which the author knows to be false, for, though he is pretty free in his use of this uncourteous language, we do not wish to follow him in it. But it is founded on principles, which all who have within fifty years written on these subjects have proved to be erroneous, and which we think can be made to appear so to a common understanding. Our author states the excess over importation, in the three first quarters of the year 1822, at $17,000,000. This excess is of course obtained from the customhouse returns, which exhibit the domestic price of our exports, and the invoice price of our imports.

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But it is plain that this is delusive in many ways. Our foreign trade is the exchange abroad of our exports against the articles we import. We pay for the latter with our exports, not at the price at which these are here estimated, but at that which they will bear abroad. This must be greater than the price at home, by the fair profit on the capital employed in the trade; and of course a part of the return cargoes of the imports, is that profit. Our readers already perceive that our author's $17,000,000 excess of imports over exports, must undergo the great reduction of at least interest on the capital vested in those exports, which cannot be less than several millions of dollars.

But a much more important reduction still remains. The excess of our imports is to pay not only the difference of the foreign and domestic price of our exports, that is, the immediate profit on the sale of the articles exported; but it is to pay freight, to keep our immense tonnage in repair, to pay the wages of the shipwrights, chandlers, riggers, and the thousand other mechanics, employed in the construction of our shipping; and it is to pay the seamen's wages, which form the maintenance of the wives and children of seamen. All these prodigious charges are to be deducted from the excess of our imports over our exports. If the merchant brought back a value no greater than he sent out, he would of course not only not be richer, but much poorer than he was before making the voyage. He would not only make no profit, but he would lose the interest of his capital, the wages of all those whom he employs, and the deterioration of his stock. These, however, in a good business must all be paid. And of course they must be paid by bringing back more than he carried out;—by the excess of imports over exports. All these great sums are accordingly covered by that excess, which our author makes so ruinous, and which in reality is the very profit of the enterprise. The excess which is so pertinaciously said to be liquidated by an exportation of specie, is the reward of thrift, the enhancement of the exports in a foreign market, and the value added to them by the industry and skill of our citizens. And these are the precious doctrines of our author and his school! An excess of value imported, brought home, which has built up our American navigation and with it our American navy; which has reared Boston, New York, Philadelphia, and Baltimore, from inconsiderable ports to great capitals; and which has

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spread comfort, prosperity, and wealth through all the channels of the country, is called ruinous.

But we have a few more remarks to make on this point. The customhouse balance thus applied is still more deceptive than this. A very extensive part of our industry is in the freighting business. The outfits of the vessels that proceed from the northern parts to the south are small, their freights are ample. These are invested abroad in some form or other, and either come home in the shape of imports, or pay by bills of exchange for imports. The whole amount of the latter accordingly goes to swell the article of imports, and nothing offsets it in the export account. Thus all the industry, skill, and capital of the whole freighting business of the United States, go for nothing, absolutely nothing, with these warm friends of national industry. To make this matter plain to every capacity, we shall borrow a few words from the intelligent editor of the Portsmouth Journal.

'The great fallacy of arguments drawn from the custom returns will be apparent from considering only one branch of the trade of this town, namely, the freighting business. In the course of the last year we have had 27 ships and 12 brigs employed in this trade, several of which have made two voyages. It will, therefore be perfectly within the truth to make a calculation of forty voyages to the year. These vessels generally took with them hay and lumber sufficient to pay their port charges in the southern states, say $100 each or $40,000 the year. They receive upon an average £1000 each in Europe, or $177,600. Deducting from this sum their port charges in Europe, they brought home in salt and iron, or left behind to be brought home by others, $150,000. The whole of this sum appears on the books of the customhouse as imports, without one cent of exports to balance it.'

This is an example on a small scale. Mr. Seybert tells us, on the large scale, that 'the American tonnage employed in the foreign trade from 1795 to 1801, both years included, amounted in the aggregate to 4,544,314 tons, or 649,187 tons per annum. The profits on it, if calculated at the rate of $50 per ton, for the average annual value of freight out and home on voyages of every description, must have produced for the freight alone 32,459,350 dollars per annum. The estimate for the gain of freight is a moderate allowance; intelligent merchants have calculated it as high as seventy dollars per ton on voyages of every description.'*

* Seybert's Statistics, p. 281.

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There is an example, which still more strikingly shows the absurdity of these balances. A well known establishment, in the state of Maine, exports annually a quantity of ice, which in our northern latitudes is produced exceedingly cheap, for which it receives in return colonial produce, it has been said, to the amount of $100,000. But this beautiful creation of value goes for nothing in our author's view. For nothing, did we say? it is a balance of $100,000 against us. In short, there are some things so plain, that, however pledged or tempted to deny them, one feels awkwardly when challenged directly to the point. We would therefore ask our author, how he thinks the great accession of wealth in the country has arisen? The houses in our cities—the ships in our ports—the expenses of our government—have surely cost something. The balance of trade has *always* been against us according to his notion of that balance; and we should be glad to know how, in a trade ruinous from the beginning, so much property has been created, distributed, consumed, or accumulated? Let him not say that we are now living from the profits of better times. We think he cannot point out more than one year, since America was a nation, when this balance has not been vastly against us according to his explanation.

We shall not wholly dismiss his account of the debts of America to foreign nations, without remarking on one other item, which amounts to thirty-one millions or a half of his whole sum of sixty millions. Nearly all of it is public stock owned by foreigners, and for which of course interest is paid. The stock has been created at different periods in our country's history, but principally to pay the expenses of the revolutionary and the late war. As our author considers the late war to have had a very happy effect on the industry of the country, he cannot quarrel with the objects, for which the loans were raised. In other words, he must allow that these thirty millions, which we owe to foreigners, were borrowed for great national ends. This consideration is enough to show how ungracious it is to throw this sum in, to swell the amount of the debts of the country, and to add it up into one mass with the balance of trade. But this is not all. This large sum is really a loan of so much capital to the United States. Having been raised for the purposes of war, its value was of course consumed in the service of our country; and the $30,000,000 owned abroad accordingly stand in the place of and represent that amount of domestic capi-

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tal, which must otherwise have been destroyed without reproduction. Is it then to the disadvantage of the country that so large a portion of the funds requisite for its wars have been furnished by foreigners? On the contrary, is it not an addition to its resources? Besides, what has this to do with the question of excess of importation? Our author surely does not think, as he seems to do by introducing it, that, because stocks are sometimes sent to Europe as remittances, therefore the debt was created for that object? The merchant A, who sends stock to London to pay for goods, buys it first of B at home; henceforward B will possess the value given him by A for the stock, and all the profits upon that value. The interest of the stock is paid, it is true, to the foreign stockholders, but it is not therefore sent out of the country; for B, who sold the stock to A, is receiving interest on the purchase money; and the foreign stockholder receives, not an interest drawn from our country, but the profit on the foreign goods, in payment of which he received the stock. In short, in every case, the foreign creditor of government sent a value, at some time or other, to America, which was regarded as an equivalent by America; and, while we pay the foreign stockholder interest on the one hand, on the other, we have our profit on that equivalent which was given us for the stock; so that it is wholly immaterial, whether our stocks be held abroad or at home. If held abroad, the interest goes; but the profit on the value paid for them stays. Or if the value of the loans, on which the public debt is founded, be regarded as wholly consumed and destroyed, then the thirty millions owned abroad saved the destruction of that amount of domestic capital. The interest of $30,000,000 goes abroad; but the profit of the $30,000,000, for which this was substituted remains at home. Stock held by foreigners stands on precisely the same footing as stock held at home.

In pursuing the subject in his second chapter, our author treats of the high rate of bills of exchange, and regards it as another evidence that the balance of trade was totally against us. He makes no allusion to the fact, that when exchange was here at a premium of ten per cent., dollars in London were at 4*s*. 1¾*d*. and of course that exchange was cheaper than silver.* That it must have been so, one would have

* See this subject very ably stated the last winter in an essay in the Portsmouth Journal.

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thought, must have struck him, from the fact so often alluded to, that no specie was sent to England. Nor does he give any credit for the effect of this same high rate of exchange on the sales of all American produce in England; whereas it is plain, that for exchange to be at 10 per cent. premium, is equivalent to an advance of 10 per cent. on the price of our exports in the foreign market. In fact the dark side only of every thing presents itself to his mind, and the terms of extravagance, with which that is exaggerated, are sometimes amusing. Thus, in speaking of the ill concerted speculations, in the stock of the bank of the United States, which took place last summer, he maintains that the fall of that stock from 109¼ to 98 in the course of five days, was a reduction 'almost without a precedent, except in the case of the Mississippi and South sea schemes.' Now, without observing that in ten days more the stock had risen again to 102, we would only expose this exaggerated comparison of a change in the price of an article of 11 per cent. in five days, to the South sea scheme. Scarce an article of extensive consumption, but varies as much, and often in consequence of the arrival of one vessel. For stock of the United States' bank to sink in five days from 109 to 98, is for flour to sink from 6 dollars to 5,34 cents; or coffee from thirty cents to 26⅔: a considerable reduction certainly, but as much like the South sea scheme, as a cup of coffee is like the South sea.

Having in the first part of his work set forth the evils of the country, viz. excessive importation, drain of specie, stagnation of industry—and impending ruin, he proposes his remedy; which is, the encouragement of domestic manufactures by an increase of duties on importations. This topic is so ably treated by all the writers on political economy, particularly by Say, that we forbear to engage in its discussion. We would only repeat a remark which we have already made, that whereas our author, by his too often repeated sneer at Smith, affects to ascribe to him alone the doctrines which he is combating, there is nevertheless not an author of repute, who does not follow Smith on this subject.

5. Our author urges upon us the encouragement of domestic manufactures, by the example of the prohibitory tariffs of almost all the nations of Europe, and, as a strong additional inducement, tells us that Russia has changed her system *three*

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times in *six* years, laying heavy duties in 1816, whereupon her manufacturers grew rich; repealing them in 1818, whereupon they were ruined; and reenacting them in 1822, on the strength of which they will doubtless flourish again. And these are the examples for us to follow; these disastrous fluctuations, productive of greater evil than even the worst permanent policy! It is no small argument for those, who oppose the scheme of violent congressional interference to direct the inhabitants of the country how they shall employ their capital and their industry, that from the nature of the case, and particularly in a government like ours, where political parties are liable to continual variation, the most ruinous caprice may be brought into action from session to session of congress, and the most important investments and extensive enterprises have no other security, than that a majority in congress may continue of one mind.

To the prosperity of the manufacturing interests of our country we are most hearty wellwishers. America has reached a point, where they ought, and where they will be cultivated, nay, where they *are* cultivated in full proportion to any other branch of industry. We simply protest against the destruction of our commerce, and the imposition on the whole community of heavy taxes, first in the shape of higher prices, and then in the necessity of an excise, and all for the sake of forcing our manufactures to a premature ripeness. The very reason, the only reason, which leads foreign nations to forbid the importation of articles of external manufacture should decide us to continue in our policy of admitting them. In all the states of Europe, exceedingly artificial and complicated systems of mutual prohibition have grown up from various causes; such as national rivalry, financial necessities, the colonial system, and theories once believed sound, but now, as theories, universally exploded. These systems of long standing could not be overthrown, without vast sacrifices of fixed capital, which no government would dare, which none perhaps would be justified in attempting. Adam Smith, notwithstanding all that has been said against him, no where recommends the general and speedy introduction of the system, which he has unanswerably defended; but, on the contrary, has repeatedly urged that all changes should be exceedingly slow and gradual. On this ground alone the restrictive and prohibitory systems are justified; on this ground they are justifiable in old countries, where the very

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idea of a sound policy is abandoned, and the only question is, what potent drug, what political *eau médicinale*, will longest sustain the frame without producing a worse palsy than it is meant to avert. In our country, besides all the considerations in favor of the liberty of employing one's capital and industry to one's mind, is that very additional argument, by which the opposite system is defended in Europe. A considerable proportion of the capital of the country is commercial. Acquired in commerce, it has been continued in the same pursuit. A tonnage valued at $70,000,000, the real estate in the seaports, which we will not undertake to put into figures, the industry of those who have been brought up to trades connected with commerce; all these united seem really to present to us a mass of interests something too important to be sacrificed by an act of congress. To talk of encouraging manufactures by 'protecting duties' is an absurdity in language, with respect to manufactures which do not yet exist in the country, and which would not have been attempted for fifty years, but for the late war. The *existing* interest needs protection; and we repeat, that precisely those arguments used abroad to defend their restrictive systems, may be forcibly employed here against the prostration of our commerce. To make this more clear, we will suppose that, by some peculiarity of things, America had, from the first, grown up a manufacturing people; that we really fabricated a great portion of what we consume; that these manufactures had resulted in an unexampled prosperity—a doubling of our numbers in a ratio that amazes the world, a growth in wealth, improvement at home, respectability abroad of the most extraordinary kind; and all this without great protection on the part of government, but by the mere facilities of our soil, and industry of our citizens. Suppose that, while things were in this state, the inhabitants of the seaboard should demand heavy duties to be laid on every article manufactured at home, for the sake of producing a demand for foreign merchandise, and in order to be able to bear the expense of digging away sand bars, erecting lighthouses, and in every other way removing the obstacles to navigation. Can imagination do justice to the clamor and trouble it would excite? Would the government, that broached such a policy, ever convene again in Washington? And yet this is fairly the case with the pretensions of our author and his school.

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Our limits do not permit us to go into the main argument of the comparative productiveness of manufacturing and commercial industry, but we cannot but correct one false impression of very general prevalence. It is said, that, by importing an article of consumption, we pay to foreign workmen and capitalists the profits on its production, whereas, if it be manufactured at home, we pay our own capital and workmen; and that therefore in the former case the industry of foreign nations is encouraged and the wealth of foreign nations increased, and in the latter, our own. If we mistake not, there is a fallacy in this reasoning, which has not yet been distinctly pointed out; though in fact it is felt and condemned under many other forms. It arises from confounding the two kinds of production, that of the foreign artist, who fabricates the article, and that of the merchant who brings it home. As far as the interests of America are affected, the American merchant is the producer of what he imports. Instead of building a factory, he builds a ship; and invests his capital, not in spindles and looms, but in an outward cargo. On his return he brings the article wanted into the market, by a process which, in its effect on the national wealth, is precisely similar to that of the domestic manufacturer. Suppose that British dry goods, instead of being costly articles in England, were productions spontaneously accumulated on a desert coast, and that the merchant was obliged merely to go and gather them up; but that the length and danger of the voyage made the goods on their arrival as dear as they now are, in the existing state of things. Here it is plain the merchant would be the sole producer, and the only question important to the nation would be, whether the goods were worth the expense of the expedition. This is no fictitious case; the whale fishery corresponds with it identically; and supposing the price to be the same, it would be indifferent, as a question of national wealth, whether we bought the oil of the British, or dragged it from the deep. When the merchant therefore brings an article of English goods into the market, he has converted his capital, skill, and industry into an useful object of consumption. He, his shipmaster, ship-builder, rigger, rope-maker, duck-weaver, crew, with all their wives and children, produce and manufacture the article *quoad nos*, and the consumer pays for it. The price that he pays is the full price of its production to the merchant,

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ship-master, &c. If the domestic manufacturer produces it, the consumer pays the price to the proprietor of the factory, to the machinist, the weavers, &c. who fabricate it. In both cases, it is a price paid to American capital, industry, and skill; and even our author would probably allow that, of the two American manufacturers, we have a right to employ the cheapest and the best.

But it may be asked, if it is not the American merchant who pays the foreign manufacturer, who does pay him? He is surely paid by some one, and that to profit. To this we answer, that he pays himself, as every person in prosperous business must. Profitable trade supposes that both parties gain; that is, that both parties get a profit on their capital, and wages for their industry. And both are enabled so to do, because a new value is produced. By this new value the producer is paid; if he consumes it himself, he is paid in his preserved life, continued health, and increased pleasure. If he produce more than he consume, he exchanges the surplus for something else, which he can consume, either unproductively in gratifying his wants, or productively by adding to his capital. In either case he pays himself. Two traders are enabled thus to pay each himself and yet not injure the other's bargain, by the circumstance that their goods severally have acquired an additional value, by coming to a market, and being converted from a surplus into an article of demand. It is mutually profitable to them to exchange; each has gained value by the barter. There is therefore no more propriety in saying that in the importation of British goods we pay British industry, and employ British capital, than that the British employ American capital, and pay American labor. It is clear that the goods represent an equal amount of capital and industry in the possession of the American as of the Englishman. Supposing the purchase to have been judicious, it was equally for the interest of both. The Englishman, in the price for which he sold it, got interest on his capital and wages on his labor; and the American will do the same:—neither, because he has overreached the other, neither at the expense of the other; but each, in the increase of value by exchanging articles, respectively more wanted by the other.

But it will still be urged, that, although the American importer may not sacrifice any value of his own, to pay the foreign

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manufacturer, still, by trading with the foreign manufacturer, he confers on him the benefit of a demand for his fabrics, and deprives his own country of the same benefit, and that thus foreign capital and industry are encouraged at the expense of the domestic. This is so plausible a view, that many persons, by no means of the manufacturing party, assent to it; and plead only in practice against it, that existing mercantile interests are entitled to protection. The view, however, is wholly without foundation, and it is capable, we think, of proof, that domestic capital and industry are precisely as much encouraged by importation as by manufactures. To manufacture an article instead of importing it, may employ capital in a different way, and create a demand for a new *species* of industry in the place of an old one, but never can make the accession of a particle to either, beyond the fair progress of society at large. When the importer purchases a foreign fabric, he gives for it a product of American capital and industry, which is regarded as an equivalent. No matter in what form this product exists, nor what channel it may have passed through. It may be potash, or tobacco, or cotton, or dollars. The importer receives nothing in Liverpool, for which he does not pay in the produce of American capital and industry, of which, of course, the costs of the voyage make a part. Every bale of goods bought, therefore, represents its full value of American industry, labor, and skill in some form or other. No part of this value goes to pay the British artist; because, in that case, the same thing would be twice paid for. The American consumer pays the cost of producing the article in the American market; and the British consumer, who receives and consumes the tobacco, cotton, specie, or potash, which were given for the article, is the individual who in reality pays the British artisan. At any rate, as the American produce, including the expense of transportation, is an equivalent for the value of the goods for which it is exchanged, if the American merchant encourage British industry, the British manufacturer encourages American industry to precisely the same amount; to an amount which the parties themselves judge to be the same, because they exchange the results voluntarily with each other. Accordingly, a thousand dollars invested in importations, encourages American industry, and pays the interest on American capital to its full amount; and, if the business be prudently

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managed, so that the importer shall keep his fixed capital unimpaired, defraying all the charges, and yielding a fair profit (and this must be done in any business, or that business will be abandoned for a more profitable, if there be one), this thousand dollars has been employed as advantageously as possible to the country. No matter where the scene of action has been laid, in the broad plantation, the deafening stories of a factory, or on the stormy sea. A thousand dollars can put in motion only a certain quantity of labor; and, except where protected by a monopoly, can of itself acquire but the average profits of value possessed and invested in other ways, in the same community.

We are surprised that Dr Seybert, who in every other respect has soundly stated the doctrine of the balance of trade, should here have deserted his own principles. He tells us that the balance in favor of England is actually an unfavorable balance to us, because our imports consist in manufactured articles, and that twenty millions and a half are annually consumed by America, on which we pay profit to England; adding in a note, that the raw material is estimated to increase seven fold in value by being manufactured. This fact, however, does not bear on the question. When the American merchant buys the English manufactures, he exchanges value to their amount. Is the invoice of dry goods worth a thousand pounds, he gives for it a thousand pounds' worth of products of American industry and capital; be it gold, silver, exchange, tobacco, or cotton, the principle is the same. The parties buy of each other.

But it will be said, that by encouraging domestic manufactures, we bring into operation more industry in the production of the same article, and that therefore domestic industry is more encouraged. This fact, in most manufactures, is true; but the only consequence of this truth is, that, without serving any one, not even the manufacturing interest, the community is made so much the poorer. To employ more industry in producing the same result,—to work four hands in order to get into the market what might otherwise be got by the labor of two, is merely destroying so much productive industry, and making the community so much the poorer. This is immediate-felt in raising the price; and the direct consequence is, that the country is not enriched, but impoverished; it pays more for the same thing, fewer persons of course will consume it,

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and those, who consume it, will do so at a greater sacrifice. But the producer is not benefited. It is no advantage, on the contrary, it is a disadvantage to the producer to enhance the cost of production, as this infallibly diminishes the consumption. If more industry is employed in the domestic manufacture, than in the foreign importation of the article, then more American capital and American labor are consumed for the production of the same effect. And this is an evil.

It is an evil to the farmer. The manufacturers have attempted to make common cause with the farmers, and represent the latter as saying 'we will give you to eat, if you will give us to wear.' But the farmer wants various kinds of clothes, and something besides clothes. He wants cloth of one manufacturer, linen of another, shoes of a third, tools of a fourth; it is for his interest to get each as cheap as he can. It is for his interest to give as little wheat as possible for his coat, that he may have the more to spare for his shirt; and, again, as little as possible for his shirt, that he may not be stinted in his tools. If he have to pay his neighbor, the manufacturer, four bushels of wheat for his coat, when the merchant would have furnished it for three bushels, or the value of three bushels, in proportion to the difference, he is able to furnish himself with fewer comforts,—he is so much the poorer.

We wonder, moreover, that this argument has not suggested to the manufacturers the immediate effect which their policy would have on the export trade of the United States. Millions of dollars of our produce are now called for by Great Britain alone, and paid for in her produce. To cut off our trade with her would be to sacrifice a considerable portion of the wealth accumulated in our country by this branch of industry. Our author, it is true, murmurs at the British, because they will not take our wheat. But why is he not contented that they take our tobacco and cotton; or what would it avail us to have the right of exporting wheat, if, by prohibiting their manufactures, we refuse the only thing it is for their interest to pay? In fact, our author's intimations amount to this, that because we cannot find a market for every thing we produce, it is not worth while to have a market for any thing.

In the present state of things in this country, we hold this course of argument to be unanswerable. It is decidedly for the interest of every individual consumer in a free communi-

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ty, that every article of consumption be brought into the market as cheap as possible. It is therefore the interest of every consumer in America, that every article be produced in the market, in such a way, that it may be procured for the least value in exchange. With respect to the consumer, therefore, it is not for his interest that any manufacture be attempted, in which more capital and industry will be required, to produce the same, than would be required to produce it in the way of commerce. The capitalist, considering him as undecided whether to invest his capital in manufactures or commerce, has the same interest to invest it where the least capital will produce the greatest result. Prospectively, therefore, American capital can be interested to carry on no manufacture, where the cost of the imported article is less than that of the manufactured. For manufacturing capital, already in existence, we would certainly allow the claim to reasonable protection. It ought not to be forgotten, however, what a prodigious bounty —that of the restrictive system—was paid, by the commercial capital of the north, and the agricultural capital of the south, to the manufactures set up during the war; and it is not without disgust, that, under the head of general remarks in the digest of manufactures laid before congress at the last session, we perceive the decline of prices since the war to be often spoken of by the owners of factories as an injustice to the manufacturer.

As it is for the interest of the consumer that every thing should be cheap and abundant, instead of the complaints which we often hear, that our industry and capital cannot sustain a competition with the English, we ought to perceive that, so far from being injured, we are served and assisted by it. There are writers among us, who appear to think that human happiness consists in working hard to produce; whereas it consists in consuming. The miserable serfs, who, in the smoking and sulphurous forges, the dreary coal mines, and the stunning factories of England, are working from twelve to sixteen hours a day on wretched wages, are toiling for us. They labor to lessen the amount of American industry which it is necessary to pay for the articles imported.—Their competition? it is a competition to put it into the power of the American farmer, and the American mechanic, to consume more at less expense, and thereby to become richer.

On the general question of encouraging manufactures by

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duties on imported articles, a question on which appeals have been importunately made to the popular feeling, it ought ever to be borne in mind, that it is a question immediately of capitalist against capitalist. Those who go into manufactures with large capitals will command and fix the market; those who engage in this business with small capitals, or none, will be in precisely the same want of encouragement then as ever. British competition may be shut out; but the far more powerful competition of domestic capital, and all the advantages which it commands, will be called into existence. Moreover, the competition among capitalists themselves would sink the profits of the most successful manufacturing establishments to a fair average level with other employments of industry and capital, so that the only effect on the community, in this respect, would be, that so much capital would have been diverted by legislative interference from one pursuit to another; and that the public would be the sufferer in all the difference between the eligibility of the two investments, that is, in all the amount of duties imposed to produce this diversion.

With regard to the effects on the population; it may be a question harder to decide which employment of capital is most favorable to the growth and increase of a hardy, vigorous population. As advised at present, we are by no means persuaded that the commercial investment is not as favorable as the manufacturing. We think but meanly of the average morality of sailors; but we do not know but it equals that of the inmates of factories. Besides, the ships' crews are the smallest part of those whom commercial capital employs. Tracing into all its branches the effect of either investment on society, we believe it will be found, that those who are supported and fed by commerce, are as moral as any other part of the community.

As to the numbers which are respectively fed by commerce and manufactures, we believe that great mistakes both of fact and principle exist. Manufactures gather at first a greater visible multitude together. A large building or buildings are filled with men, women, and children, and a little village is formed by their dwellinghouses. A town almost grows up in a season. But this is rather an apparent than a real effect. The factory is usually built on an unfrequented spot; and the nature of the pursuit condenses more of the labor upon the one

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point where the buildings stand. The operations of commerce are lost in her own crowds. A China ship and cargo are as costly as Waltham factory; but the ship is not to be distinguished among the forests of masts at the wharfs, nor can the multitude, which have in some way or other been employed in connexion with the vessel and cargo, be pointed out and enumerated, scattered as they are throughout a large city, nay, throughout a country. We think that in an open trade, and in a free country, taking one pursuit with another, from the beginning to the end, the same capital puts in motion about the same quantity of labor, directly and indirectly, and to about the same profit. Did our limits admit, we could in various ways make this probable. It is ably enforced by the intelligent editor of the American edition of Say's Political Economy. In this respect, therefore, we think there is an error in fact, in supposing that manufactures employ more labor than commerce, tracing each from the beginning to the end of its operations. But the error in principle is still more apparent. It is no recommendation, but, on the contrary, an objection to a pursuit, that it employs more men, more labor for the same end; else, all machinery, instead of enriching, would impoverish the nation. Many machines have been invented which do the work of hundreds, yea, of thousands of human hands. It is acknowledged that they are one great cause of the vast product of national wealth where they exist. But they have the effect to employ less labor to produce the same value; and if it be a recommendation of domestic manufactures, that they employ more labor to produce the same article than commerce employs to import it; we should be glad to know, how a spinning jenny, which reduces nine tenths the amount of industry required to produce an article, can be the source of wealth? We should be glad to know the difference between a ship and all other kinds of machinery, that makes a reduction of the amount of labor, necessary to produce an article, ruinous when effected by the employment of a ship; and salutary when effected by the employment of double speeders and carding machines. In fact, it is the interest of every consumer, and that is synonymous with every man, that every thing which he is to consume should come into the market as cheap as possible; and this is to be effected by producing it with as little labor and expense as possible.

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When we witness the zeal, with which the cause of manufactures is pleaded, and duties on foreign importation are demanded, we cannot but ask, with what justice so large a portion of the agricultural, the commercial, nay, the manufacturing capital and industry of the country is to be forced out of the channels, in which it has flowed so long and so profitably, for the sake of providing a bounty for those branches of industry, which, were they profitable, would need no bounty? To destroy the importation of foreign manufactures would, as its first effect, be to reduce very low, if not to annihilate the market for our great southern staples. It would be to force the South Americans and the Hindoos to supply the British market with cotton, which they soon would be able to do, if the British manufacturer were unable to pay for our cotton with his fabrics. Let it not be said we should at home consume all the cotton, which we now export. On the contrary, if it be correctly maintained that in general raw materials increase seven fold in value by manufacture, we should consume only one seventh of what is sold in England. We should be committing therefore on a large scale, the same error, which England has committed on a small one, in forbidding the importation of timber from the North of Europe. She has injured her manufactures by taking away a market from them, and she provides timber for her navy at a greater expense. But this is not the worst, that would happen to us, by building up manufactures at the expense of our commerce; we should destroy the most flourishing *manufacture* now existing in America. After the little domestic manufactures, by which single families supply themselves with the necessaries of life, and small mechanics and artisans provide the most essential commodities for their villages (which, though insignificant in any one instance, probably amount, in the aggregate to one hundred millions of annual value, throughout the United States) next to these, and far before any of the great manufacturing establishments of cotton, of wool, of iron, or of glass, we place *the manufacture of ships.* The tonnage of America in 1810 was estimated at seventy-one millions of dollars in value; two thirds of which were employed in the foreign trade. With the exception of a considerable part of the sail cloth, and an inconsiderable sum for bunting for colors,* this vast amount of value

* Tench Coxe's Statement of the Arts and Manufactures of the U. S. of America, p. xix.

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is produced out of the growth of our own soil, and of our own forests. On an average of all the years from 1803 to 1816, Dr Seybert found,* that the annual amount of *new* tonnage in America, was 102,811 tons, exceeding that of the British empire. This gives an annual *manufacture of tonnage* of five millions of dollars. This branch of *manufacturing industry* therefore must be, two thirds of it, sacrificed, and to promote *other manufactures*. And yet this vast amount of manufacturing industry is employed and paid by commerce, only in the very first step of her operations. This annual bounty of five millions of dollars paid to the forester and woodman, to the iron-founder and smith, to the carpenter and shipwright, does but bring the vessel to the quay. Seventy thousand seamen, with their wives and children, are next to be clothed and fed, or, in other words, more than nine millions of dollars are paid annually by commerce, in the single article of wages to seamen, at the rate of eleven dollars per month. As no account is here made of the superior wages of captains and officers, this estimate is quite within bounds. The subsistence of the crews, at the rate of twenty cents the man per day, amounts to over five millions of dollars per annum. And thus, in the pay and sustenance of seamen alone, fourteen millions of dollars are annually expended by the commerce of this country, in the wages and subsistence of the laborers it employs. Combining this with the five millions annually required to keep the American tonnage in repair, we have nineteen millions annually disbursed by the *ship manufactory* to the laboring classes of the community. Here we stop, though it is, as we have said, the first stage of commercial operations. We say not a word of the industry required to prepare the outward cargo, or vend the return cargo, each of which is put in motion by commerce, the former to the enriching of the great agricultural states, and the latter resulting in the growth of the great commercial cities. We say nothing of the service rendered to every individual, however remote or distant he may be, who is enabled by commerce to take advantage of the crowded population, the accumulated capital, and the intense competition which prevail in foreign countries; and thus purchase the most useful and necessary articles at the cheapest rate. We say nothing of all these, but we rest on the simple preliminary fact, that the commerce of this country,

* Seybert, p. 310, 311.

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in the outset of its operations, without reckoning profit on an ounce of produce shipped for exportation, pays to the hard working industry of the country nineteen millions of dollars annually. When it shall be proved that any or all of the manufacturing establishments of the United States do this, it may be argued with some plausibility that they deserve to be built up at the cost of our commerce. Meantime a moment's reflection on this vast amount, which is paid by commerce in annual wages to those whom it employs, abundantly shows, that in commercial enterprises, comparatively speaking, there is a vast consumption of labor, and a small one of capital. To erect any manufacturing establishment, with tolerable prospects of success, a hundred or two hundred thousand dollars are wanted in the outset. There is not probably an American merchantship that floats worth forty thousand dollars, and the great mass of our navigation consists of vessels, which are built and fitted for sea, at a cost of from four to twenty thousand dollars. With this small outfit, the globe is circumnavigated, and the fertility, the cheapness of labor, the peculiar staples, the accumulated capital and improved arts of every country, are laid under contribution to enrich ours. Certainly this is the circumstance, which has caused our commerce to flourish so much beyond our manufactures. Not a want of capital, as some writers allege, but a want of capital in those great masses, which are required to set up manufacturing establishments. Capital, instead of being scarce, is abundant in this country, if by capital we mean such an amount of value as enables a man to undertake and prosecute an independent business. But it is in small amounts; like the orphan's cup in the Iliad,

Χείλεα μὲν τ' ἐδίην', ὑπερώην δ' οὐκ ἐδίηνεν.

Without reflecting, that the existence of capital in small and widely diffused portions is, like the statute of distributions which is one great cause of it, not a disadvantage, but the happiest feature of our political condition; without reflecting that our progress is so rapid, that, notwithstanding its perpetual division and distribution, capital is already gathering itself into masses, competent to the most expensive undertakings; our manufacturing writers have hit upon the notable device of raising a capital to carry on this business; and the burden of all their writings and addresses is, 'we wish to raise a capital large

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enough to carry on a woollen factory, and we call upon every consumer in the country to pay us twenty cents on every dollar he consumes, toward raising this capital, of which we stand in need.' Such claims need but be plainly stated.

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QUARTERLY LIST OF NEW PUBLICATIONS.

BOTANY.

A Flora of North America. By William P. C. Barton. No. 25.
Botanical Terminology. By John Eberle.

CHEMISTRY.

An Essay on the question, whether there be two electric fluids or one; also a description of an electrical plate machine, the plate mounted horizontally, and so as to show both positive and negative electricity; and of a blow-pipe by alcohol. By Robert Hare, M. D.

EDUCATION.

First Lessons in Geography and Astronomy, for the use of young children. By J. A. Cummings. Fourth edition. Stereotype.
Arithmetic, theoretic and practical, designed to assist instructers and pupils. By V. Value.
Bible Class Text-book. Stereotype. By H. Wilbur.
New Testament, with questions. By H. Wilbur.
A complete System of Short-hand Writing. Ry J. Dodge, professor of Stenography.
The Principles of the Government of the United States, for schools. By Pardon Davis.
A Collection of Dialogues and Phrases in German and English.
The Moral Instructer, or Wisdom of Ages condensed. By Jesse Torrey.
Das Deutsche Lesebuch herausgegeben von R. B. Patton, Professor zu Middlebury, Vermont. No. I.
The simplified German Grammar, or die vereinfachte Deutsche Sprachlehre. By Peter Birkman. Harrisburgh.

GEOGRAPHY.

A Gazetteer of the States of Illinois and Missouri. By Lewis C. Beck.
The Traveller's Guide: or Pocket Gazetteer of the United States. By Jedediah Morse.
Traveller's Directory. By John Melish.
A Geographical Description of the United States. By John Melish.
A Gazetteer of the State of New Hampshire. By John Farmer and Jacob B. Moore. Embellished with an accurate map of the state, and several other engravings, by Abel Bowen.

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Military Journal during the American Revolution, with an Appendix containing biographical sketches. By James Thacher.

State Papers relating to the history of Vermont. Compiled by William Slade, Secretary of state of Vermont.

LAW.

Minutes of proceedings of the Court of Inquiry on Capt. Hull.

Annual Register of Law for the United States. By William Griffith.

Commercial and Notarial Precedents.

MISCELLANEOUS.

Letters from Paris on the Causes and Consequences of the French Revolution. By W. C. Somerville.

Essays, *descriptive and moral*, on Scenes in Italy, Switzerland, and France. By an American.

Narrative of D. R. Hunter.

Official Letters of the Officers of the United States during the late War with Great Britain. Arranged by J. Brannan.

Account of Shipwrecks and Disasters at Sea. By Rev. President Allen of Bowdoin College.

A Collection of the Miscellaneous Writings of the late Professor Frisbie, with notices of his life. By Andrews Norton.

Boston Journal of Philosophy and the Arts, for May, 1823.

Letter from General Sumner to President Adams on the Militia, with his Answer.

Cotton Maker's Assistant.

Philadelphia Vocabulary, with the signs of Quantity. By James Ross.

A Memoir on the Chesapeake and Delaware Canal. By J. Gilpin.

Narrative of the Rise and Fall of the Medical College of Ohio. By Daniel Drake, M. D.

NOVELS AND TALES.

The Brothers, or Consequences, a story of what happens every day, with some account of Savings Banks.

Seventy Six

The Wilderness: a tale of Braddock's times.

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POETRY.

The Benevolent Lawyers, or Villany Detected: a comedy in five acts.

New York Selection of Sacred Music.

Julian, a dramatic fragment. By J. W. Simmons.

American Sketches. Farmer's Fireside, a poem.

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Sketches of the Public Services of Adams, Clay, and Crawford. By a New York Republican.

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Religion productive of National Prosperity: a sermon delivered on Thanksgiving day, in the chapel of the South Carolina College. By Robert Henry, professor in the S. C. College.

A reply to the Goats of Columbia in the State of South Carolina. By William K. Clownly.

The Decision; or Religion must be All, or is Nothing.

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Baker's Livy.

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The Philosophy of Natural History, by W. Smellie. With alterations and additions, to adapt it to the present state of science. Intended principally for the use of schools. By John Ware, M. D.

A Practical Treatise upon the Authority and Duty of Justices of the Peace in Criminal Prosecutions. By Daniel Davis, Solicitor General of Massachusetts.

A General Abridgment and Digest of American Law, with occasional Notes and Comments. By Nathan Dane, LL. D. and Counsellor at Law.

A Greek and English Lexicon.

*** This work, which was announced some time since, has been delayed beyond the intention of the publishers by circumstances that could not be anticipated; but it will now proceed with all the despatch consistent with the nature of such a work; which, being designed for the use of young persons in particular, will demand very great care in the revision and correction of the press.

Sketches of the Earth and its Inhabitants; illustrated by nearly one hundred engravings. By J. E. Worcester. 2 vols. 12mo.

*** This work is formed on a new plan, and is intended to supply a want in the present mode of teaching geography. It will comprise, in a geographical order, a description of the grand features of nature; the principal mountains, rivers, cataracts, and other interesting objects and natural curiosities; also of the principal cities, and remarkable edifices and ruins; together with a view of the manners and customs of different nations.

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